

OFFICE OF THE
ATTORNEY GENERAL



REPORT
ON
WEST VIRGINIA UNIVERSITY'S
MULTIMEDIA RIGHTS
APRIL 15, 2013

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PRELIMINARY COMMENTS

This report is the work product of the Office of the Attorney General. The findings, conclusions, and recommendations contained herein are that of the Attorney General and his team of deputies, assistants, and employees who engaged in the internal review; and not necessarily that of West Virginia University or members of the Board of Governors.

As the client of the Office of the Attorney General, West Virginia University has the ultimate authority over the release of information protected by the Attorney-Client Privilege. West Virginia University, by and through its President, has granted a limited waiver of privilege to allow the public release of this report, its conclusions, and its recommendations. To the extent reference or citation is made to a matter that could be subject to attorney-client privilege, such reference shall be deemed inadvertent and not a conscious or intended waiver of any lawful privilege or confidentiality that West Virginia University and/or its officers or agents may later seek to assert.

This report should be read as a whole, and individual passages should be viewed in the context of the entire report. Where appropriate, the report indicates the source or nature of the information on which analysis has been based or conclusions have been reached. Where such references would have been overly repetitive or might otherwise confuse the presentation, evidentiary references have been omitted.

This report is based on the information available to the Attorney General and his team during the investigation. Given the timely nature of the matter and the expeditious review that was conducted, this report does not purport to be all inclusive nor preclude the possibility that additional information may be available that may alter the analysis and recommendations contained herein. Indeed, given the nature of the internal review, access to documents maintained by private companies or individuals were limited and/or inaccessible.

Finally, since the process remains open, albeit currently suspended, the respective proposals remain confidential under the terms of the RFP and its terms are not subject to public disclosure. In light of such, this report does not disclose information relating to the proposals or the terms of the proposals. Additionally, unless a matter has been publicly stated by a proposer, or if context necessitates identification, the report attempts to limit specific proposers or information about respective proposals.

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I. INTRODUCTION

On June 8, 2012, West Virginia University (hereinafter “WVU” or “University”) published a Request for Proposal (“RFP”) seeking vendors to furnish the University’s athletic sponsorship and multimedia rights services.¹ The publishing of the RFP was a significant event given the University’s previous in-house management of multimedia rights and the competing institutional viewpoints as to the outsourcing of these rights.

By all accounts, the goal of the RFP was to obtain a wide array of proposals, and to settle (at least from a financial standpoint) the question of whether additional profit may be generated through the sale of some of the University’s multimedia rights.

To encourage responses, the RFP was broadly drafted, and did not restrict the type of packages or proposals that would be accepted for handling these multimedia rights. This broadly-worded RFP appeared to be successful, at least by industry standards, as it resulted in nine potential proposers. After the proposals had been evaluated, a potential winning proposer was identified and the other proposers were informed of the decision.

During the negotiation with the winning proposer, and prior to any award, one of the losing proposers contacted the University alleging impropriety in the process. Specifically, West Virginia Radio Corporation (“WV Radio”) alleged conflicts of interest by members of the University’s Board of Governors (“BOG”), as well as improper disclosure of confidential information in the RFP process. WV Radio additionally asserted improprieties in contracts between the University and various entities, including West Virginia Media Holdings, LLC (“WV Media”).

In light of the allegations, the University suspended the procurement and negotiating process on February 20, 2013, in order to conduct an internal review of the process. To bring further transparency and independence to the review, the University retained the Office of the Attorney General on March 5, 2013, to assist in the internal review of the RFP process, as well as to examine other allegations raised by a losing proposer.

Having completed a comprehensive and expedited examination of the RFP process, the Office of the Attorney General now issues its internal review findings, conclusions and recommendations regarding WVU’s multimedia rights procurement process.²

¹ Outlined more specifically in the RFP, the sponsorship and media rights include marketing rights, on premise signage, video and audio content rights, print and digital rights, tickets, and hospitality. The main items expressly exempted from the RFP were athletic apparel rights and those video and audio rights subject to agreements with the Big 12 Conference (generally referred to as Tier One and Tier Two media rights).

² Other items and allegations contained within the scope of our representation will be addressed in a separate report.

II. SCOPE OF REPRESENTATION

On March 5, 2013, WVU retained the Office of the Attorney General to assist in the internal review of the procurement process for the University's multimedia rights, as well as a comprehensive review of other financial matters arising out of the University's athletic department. As a State entity, the University may seek and receive legal representation from the Attorney General, the State's chief legal officer. In so doing, the University as an institution has entered into an attorney-client relationship with the Office of the Attorney General.³ The Attorney General is not personally representing any specific individuals, officers, or employees of the University.

In consultation with WVU, the scope of the representation in this matter includes the following:

1. Adherence to competitive bidding procedures/laws
2. Examination of potential conflicts of interest
3. Examination of potential breaches of confidentiality
4. Delegation of Board of Governors powers in contracting matters
5. Consideration of other WVU athletic contracts, including specifically, contracts with the following entities:
 - i. WV Media
 - ii. WV Radio
6. Examination of scoreboard donations/purchases
7. Review of the contracts for the football spring games
8. Compliance with the Solicitation of Charitable Funds Act

This report focuses only on the first five areas listed above. Although it was alleged that the additional areas are intertwined with the multimedia process, our review revealed no direct link between those areas and the matter of multimedia rights.

III. EXPLANATION OF MULTIMEDIA RIGHTS

The Department of Intercollegiate Athletics ("Athletic Department") at WVU sponsors 17 varsity sports with over 500 student-athletes competing in baseball, men's and women's basketball, women's cross country, football, women's gymnastics, women's indoor and outdoor track, rifle, men's and women's soccer, men's and women's swimming and diving, women's tennis, women's volleyball, women's rowing, and wrestling.

³ In issuing this report, WVU retains all rights to the attorney-client privilege, other than the specific information released in this report.

The Athletic Department also manages the video and audio broadcast of athletic events, as well as the sponsorship and marketing of athletic teams and competitions. Collectively, these activities are referred to as the Sponsorship and Multimedia Rights. The University currently manages these multimedia rights in-house under the brand name Mountaineer Sports Network ("MSN"). MSN is not a separate entity, but simply an account utilized by the University to conduct much of the business related to its multimedia rights. MSN has handled contracts and dealings with both WV Radio and WV Media.

A. WV Radio ⁴

WV Radio has been involved in the radio broadcast of WVU sporting events for decades. WVU has historically entered into multi-year contracts with WV Radio, and the contracts have routinely been renewed upon expiration. There is no evidence that the WV Radio contracts have ever been placed out to competitive bid by the University. WV Radio's current contract expires May 15, 2013.

WAJR, a WV Radio station, is the flagship station for football and basketball broadcasts for WVU. As WV Radio expanded over the years and created a statewide network ("Metro News"), the relationship between MSN and WV Radio also expanded. Under the existing contractual relationship, WV Radio provides the satellite uplink and delivery mechanism for the radio broadcasts of WVU sporting events. The events are broadcast utilizing the existing Metro News system. WV Radio also provides certain members of the broadcast crew and technical support for the broadcasts such as the studio announcer and engineers. WV Radio also provides a certain amount of advertising to the University to promote these events and broadcasts.

Radio stations do not have to be a part of WV Radio's Metro News network to receive the game signal. Separate contracts with the University are arranged with each individual radio station broadcasting WVU sporting events. However, if a station is not part of Metro News, it must purchase from WV Radio equipment enabling the station to receive and utilize the signal.

West Virginia University currently receives revenue from a limited amount of advertising sold during the radio broadcasts of WVU athletic events and the related MSN produced pre- and post-game programs. Local radio stations are also allowed to sell specified amounts of advertising during these broadcasts. Apart from its local stations, WV Radio receives no income from the advertising sold during MSN programming.

⁴ The information contained herein is based upon interviews with Athletic Department employees and documentation. It was our intent to confirm these findings and/or obtain a more complete background directly from John Raese, Chairman of the Board of WV Radio and President and CEO of Greer Industries, the parent company of WV Radio. However, in light of his refusal to provide additional information, our review is based upon the best evidence and information that was made available to our office.

WV Radio does produce its own pre- and post-game shows which are broadcast by participating stations immediately prior to and following the MSN programs. These WV Radio-produced shows are not directly affiliated with WVU or MSN. As such, WV Radio receives the income generated from advertising sold during these broadcasts.

B. WV Media

WV Media currently holds far fewer WVU-related media rights than WV Radio. In the past, WV Media contracted the television broadcast rights for WVU's 2011 and 2012 spring football games. At present, it owns the rights to broadcast shows for Dana Holgorsen and Bob Huggins. WV Media obtained the rights to broadcast the football coaches' shows involving Dana Holgorsen through an RFP process.⁵

C. Tier Three Rights

Generally speaking, Tiered Rights are audio and video rights including television broadcasts. These are divided into three tiers, known as Tier One Rights, Tier Two Rights, and Tier Three Rights.

Tier One Rights and Tier Two Rights are rights to broadcast and reproduce audio and video depictions of Mountaineer Football and Mountaineer Basketball games on a national or regional level, such as on major networks and major sports channels. When the University agreed to join the Big 12 Conference, it assigned its Tier One Rights and Tier Two Rights, to the Big 12 and its conference agreements.

Tier Three Rights are essentially all other audio and video broadcast rights, including all national and regional broadcasts of sports other than Mountaineer Football and Mountaineer Basketball as well as local broadcasts of these two sports. WVU continued to retain its Tier Three Rights upon entering the Big 12 Conference.

The rights addressed in the RFP in this matter have generically been referred to as Tier Three Media Rights. While a significant aspect of the RFP, the Tier Three Media Rights are actually only a portion of the broader Sponsorship and Multimedia Rights that are the subject of the RFP in this matter. The broader multimedia rights at issue in this RFP include: 1) Marketing rights such as use of official marks and endorsements, retail opportunities and coach's endorsements; 2) On-premises signage such as the video board, permanent and LED signs in and around the stadium or coliseum, and signs in the concourse areas; 3) Event marketing rights such as game day sponsorships, product distribution, promotions and out-of-market events; 4) Hospitality experiences such as

⁵ Questions relating to the various contractual arrangements between MSN and WV Radio and WV Media, including the coaches' shows and the radio rights will be addressed in a separate report.

tickets and special parking opportunities, premium seats and suite access, pre-event hospitality tents and behind-the-scenes access at athletic events; 5) Video content rights such as live and tape-delayed events, highlight and coaches' shows; 6) Audio content rights such as pre-game and post-game shows and affiliate rights; 7) Print rights such as game day publications and promotional materials; and 8) Digital rights such as website advertising, online store rights and streaming rights.

IV. SUMMARY OF INTERNAL REVIEW CONDUCTED BY THE OFFICE OF THE ATTORNEY GENERAL

Our representation and internal review began on March 5, 2013, and utilized a multi-faceted approach that examined and analyzed law, written documentation, electronic files and communications, and interviews with individuals that may be privy to information or documentation relevant to the scope of our representation and internal review. Overall, our Office's internal review was comprehensive and designed to capture relevant, necessary information sufficient to analyze the propriety of the multimedia process and other matters within the scope of our representation and internal review.

As part of our internal review, we collected and reviewed information from multiple individuals, including the following:

James Clements (WVU President)
Oliver Luck (Athletic Director)
Mike Parsons (Deputy AD)
Mike Szul (Assoc. AD)
Lisa Ammons (AD Business Manager)
Michael Fragale (Asst. Sports Information)
Cathy Martin (Luck Asst.)
Ed Pastilong (Former AD)
Russ Sharp (Former Assoc. AD)(deceased)
Rossi Wiles (Associate General Counsel/former Procurement employee)
Graham Peace (Asst. Dean)
Steve Kite (Professor)
Robert Griffith (BOG Member/Professor)
Becky Lofstead (Assistant VP for University Communications)
Narvel Weese (VP Administration and Finance)
Brenda Mowen (Chief Procurement Officer)
Tim Bostonia (Assoc. Director of Procurement)
Joe Fisher (Former Interim CPO)
Valerie Lopez (Asst. to the BOG)
Bray Cary (CEO of WV Media Holdings)
John Bolt (Director of University News)
Jennifer Fisher (Executive Officer for Policy)

In addition, our Office interviewed the following individuals:

Rossi Wiles	Michael Szul
Robert Griffith	Narvel Weese
Tim Bostonia	Mike Parsons
Steve Kite	Brenda Mowen
Oliver Luck	Graham Peace
Brad Howe	Ed Pastilong
David Alvarez	Ben Sutton
David Johnston	Andrew Payne
Bray Cary	James Clements

We also attempted to interview John Raese. Despite agreeing to meet to elaborate on his allegations, Mr. Raese ultimately refused to provide further information to our Office. While additional information from Mr. Raese may have been beneficial, we do not believe his lack of cooperation materially impacted our review of this matter.

Overall, our Office's internal review was designed to capture relevant, necessary information sufficient to analyze the propriety of the multimedia process and other matters subject to the scope of our representation and internal review.

V.

APPLICATION OF PROCUREMENT RULES AND PROCESS TO THIS REVENUE GENERATING REQUEST FOR PROPOSAL

As a public land-grant institution of higher education, West Virginia University is subject to restrictions and regulations in the manner that it contracts with private entities or individuals. Typically, the University's contractual arrangements involve the purchase of a commodity, acquisition of property, or retention of a service. These contractual arrangements are subject to a combination of procurement statutes, rules, and institutional policies. *See, e.g.,* W.Va. Code § 18B-5-4(d)(1) (West Virginia University is authorized to "purchase or acquire all materials, supplies, equipment, services, and printing required for the governing board without approval from the [Higher Education Policy Commission.]").

Not all contracts, however, fall squarely within existing rules and regulations. Some contracts are not "purchasing" contracts, but rather relate to the University's sale of an asset or service in order to generate revenue for the University. These "revenue generating" contracts do not readily fit into the existing procurement statutes and rules that are "purchasing" focused. Within the University, there is disagreement as to the necessity of utilizing an RFP for a revenue generating contract, such as the multimedia rights. In particular, the Office of Procurement, Contracting and Payment Services maintains that revenue generating contracts must be competitively bid out, but the Athletic

Department maintains they do not have to be bid. This differing institutional viewpoint is the subject of Finding #1 in Section VII below.

Nevertheless, when a competitive process is utilized for a revenue generating contract, it is clear that the same statutes, rules, and policies that govern a competitive "purchasing" contract are applied. This occurs because revenue generating contracts are sometimes placed into the public marketplace in order to maximize potential revenue or to determine market worth.

In this case, the University opted to pursue a competitive process for the contract, which arguably necessitates adherence to the procurement statutes and rules governing requests for proposal. Therefore, our review considered and analyzed the applicable procurement statutes and rules, as well as other applicable law. A listing of the statutes, rules and policies relevant and/or controlling in this RFP process are identified in Appendix I to this report.

VI. CHRONOLOGY OF KEY ACTIVITY IN RFP PROCESS

Based upon emails, documents, memoranda and records, as well as interviews with witnesses, the following is a chronology of the key activities and events that occurred during the Request for Proposal process.

- | | |
|-----------------------|--|
| May 17, 2012: | Draft of the RFP submitted to Procurement. |
| June 8, 2012: | RFP officially published.
(Copy of RFP attached hereto as Exhibit #1 in Appendix II) |
| June 11, 2012: | RFP advertised in newspapers and emailed out to prospective proposers. |
| June 22, 2012: | Pre-Proposal Conference Call held.

Addendum 1 to RFP issued answering Round 1 (Pre-proposal) questions.
(Copy of Addendum attached hereto as Exhibit #2 in Appendix II) |
| June 26, 2012: | Addendum 2 issued along with amended Pre-Qualification Submission Documents.
(Copy of Addendum attached hereto as Exhibit #3 in Appendix II) |

July 2, 2012:	Deadline for submission of Pre-Qualification Statements. Nine (9) firms submit required statements.
July 13, 2012:	Evaluation Committee considers Pre-Qualification Statements. Evaluation Committee consists of Oliver Luck, Mike Parsons, and Mike Szul (voting members) and non-voting members Tim Bostonia (Procurement) and David Johnston (consultant with Rockbridge Sports Group). Committee finds all nine submitting firms meet the criteria and invite them to submit Round 2 questions and to participate in a Mandatory Pre-Proposal Conference on August 7, 2012.
July 26, 2012:	Addendum 3 issued changing the date of the mandatory pre-proposal conference to August 22, 2012. (Copy of Addendum attached hereto as Exhibit #4 in Appendix II)
August 10, 2012:	Addendum 4 issued making minor changes to RFP Section III, Item 7. (Copy of Addendum attached hereto as Exhibit #5 in Appendix II)
August 16, 2012:	Answers to Round 2 questions distributed to all pre-qualified proposers.
August 17, 2012:	Procurement receives notice of withdrawal via email from one proposer.
August 21, 2012:	Evaluation Committee meets in preparation for Pre-Proposal Conference.
August 22, 2012:	WVU hosts a Mandatory Pre-Proposal Conference at One Waterfront Place with eight (8) pre-qualified offerors attending.
August 31, 2012:	Addendum 5 issued to allow more time for responses. (Copy of Addendum attached hereto as Exhibit #6 in Appendix II)
September 5, 2012:	Evaluation Committee meets to consider Addendum 6.
September 11, 2012:	Addendum 6 issued. (Copy of Addendum attached hereto as Exhibit #7 in Appendix II)

- September 28, 2012:** Procurement receives notice of withdrawal from another proposer.
- October 2, 2012:** Proposals received from six (6) proposers and distributed to the Evaluation Committee. (One of the remaining seven proposers fails to submit a proposal.)
- Evaluation Committee members asked to sign a Confidentiality & Conflicts of Interest Acknowledgement form.
(Copy of Acknowledgement of Evaluation Members attached hereto as Exhibit #8 in Appendix II)
- October 10, 2012:** Evaluation Committee meets to discuss the proposals. Meeting includes consideration and scoring relating to financial and non-financial aspects of the proposals. Based upon their discussions, Evaluation Committee decides to invite the proposers to individual 30 minute conference calls to clarify and present additional details.
- October 12, 2012:** Tim Bostonia contacts Graham Peace, Robert Griffith, and Steve Kite and invites them to join as members of the Evaluation Committee.
- October 15, 2012:** Graham Peace, Steve Kite, and Robert Griffith accept and are added as voting members of the Evaluation Committee. The new members are provided with and execute Confidentiality & Conflicts of Interest Acknowledgement forms.
(Copy of Acknowledgement forms of Evaluation Members attached hereto as Exhibit #9 in Appendix II)
- October 23 2012:** Expanded Evaluation Committee conducts conference calls with five of the six proposers and narrows the field to three front runners.
- October 26, 2012:** Evaluation Committee holds conference call with the sixth proposer.
- November 13, 2012:** Presentations given by the three finalists. Following the presentations, Evaluation Committee narrows field to two and requests additional clarification from each.
- November 30, 2012:** Consultant distributes to Evaluation Committee a revised analysis based on additional information from two finalists.

- December 3, 2012:** Evaluation Committee holds conference call to discuss and review the final clarifications and offers, including selection of a finalist.
- Following the conference call, Tim Bostonia sends email to all Evaluation Committee members seeking confirmation of selection of IMG. Only four of the six respond. Mike Parsons and Mike Szul do not respond.
(Copy of Bostonia email attached hereto as Exhibit #10 in Appendix II)
- Bostonia calls IMG to inform them of the preliminary finding.
- December 4, 2012:** Bostonia sends letter inviting IMG to contract negotiations on December 11, 2012.
- December 11, 2012:** Representatives of IMG meet with WVU officials.
- December 12, 2012:** Notices sent to the remaining proposers thanking them for their proposals and informing them they are no longer being considered.
- December-January:** Contract drafts exchanged between WVU and IMG.
- January 13, 2013:** Non-binding letter of intent to award transmitted to IMG.
- February 20, 2013:** Procurement transmits a notice of suspension of the procurement process to IMG.

VII. FINDINGS

Having completed a comprehensive review of documents and witness interviews, we make the following findings. In rendering these findings, we are mindful that additional information might exist that we were neither provided nor privy to from private individuals or entities outside of the University. While we do not anticipate it, the availability and/or review of information maintained by private individuals may alter these findings.

FINDING #1: The multimedia rights contract is revenue generating and not required to be placed through a competitive RFP process under either the West Virginia Code or the West Virginia University Procurement Rules.

Nothing in the West Virginia Code expressly limits the right of the Board of Governors to enter revenue generating contracts without a competitive bid. West Virginia Code §18B-5-3 generally vests the WVU Board of Governors with the right to enter into contracts for West Virginia University. Additionally, West Virginia Code §18B-2A-4(a) grants authority to the Board of Governors to control, supervise, and manage the financial and business policies and affairs of WVU. West Virginia Code §18B-5-4 requires the Board of Governors to use competitive bids for “all purchases exceeding twenty-five thousand dollars.”

Likewise, there is nothing in the University’s Procurement Rules requiring the bidding of strictly revenue producing contracts. The West Virginia University Procurement Rules deal with “purchasing practices and procedures.” WVU Procurement Rule § 1.1.1. With respect to competitive bidding, §5.1.2(a) generally requires competitive bidding for “purchases or acquisitions of materials, supplies, equipment, services, and printing...”

During the course of our review, we discovered a divergence of opinion within the respective departments and offices of WVU regarding the need to put revenue generating contracts out for public bid. Multiple individuals within the WVU Office of Procurement, Contracting and Payment Services maintained that revenue generating contracts are subject to the Procurement rules and statute. This position is disputed by the Athletic Department and other entities within the University.

We conclude that the use of competitive bidding in this instance is not mandated by either the West Virginia Code or the West Virginia University Procurement Rules. If the intent is to require such bidding for all revenue generating contracts, express language needs to be added to the Procurement Rules.

However, since the University chose to use a competitive RFP process to bid the multimedia rights, it is still necessary for the RFP to be handled in compliance with the University’s procurement statutes and rules.

FINDING #2: Based upon the proposals and identified criteria, the record supports the University’s decision to invite IMG College to engage in negotiations for a contract.

Our Office has reviewed the various bids and proposals submitted by the entities contending for WVU’s multimedia rights, and we believe there is clear factual support for the University’s decision to invite IMG College to engage in negotiations. In making this determination, our Office makes no specific finding as to the merits of any particular proposal. Instead, our review concentrated on whether the selected proposal was

substantively inferior to the other proposals based on the criteria identified in the RFP, thereby giving rise to an allegation that IMG College was selected for a purpose other than its substantive proposal. We found no evidence to support this allegation.

In addition, during the course of our internal review, an allegation was made that Ben Sutton (current President of IMG College/former President of ISP Sports) made a statement to two employees of the Athletic Department in 2007 that implied a deal between WVU and ISP (a predecessor in interest to IMG) had been completed.⁶ Our review found that a brief interaction occurred between Ben Sutton and WVU Athletic Department employees Mike Parsons and Brad Howe during a WVU football game at South Florida in 2007.

During the course of our interviews with these individuals, our review found significant divergence of opinion regarding the substance of the conversation and/or its intent. At best, there is a vague implication that WVU would soon be executing an agreement with ISP for the Tier Three Rights. However, the absence of any agreement between 2007 and now arguably moots the entire allegation. Further, during our conversation with Ben Sutton he admitted that he would frequently express his desire to want to work with WVU, and it would have been normal for him to have mentioned as much to Mr. Parsons and Howe. He denied that there was ever an imminent contract between WVU and ISP.

Regardless of which version of the conversation one believes, our review found no evidence that the conversation in 2007 had any effect on the current RFP or the potential selection of IMG College. Rather, our review found that the record supported the decision to select the IMG College proposal as the most advantageous to the University based upon the substantive terms of its proposal.

To preserve confidentiality in the bidding process, we decline to discuss the proposals in any further detail. Since the process remains open, albeit currently suspended, the respective proposals remain confidential under the terms of the RFP and are not subject to public disclosure.

FINDING #3: The procurement process utilized in the evaluation and selection of proposals was flawed, incomplete, and/or not handled in accordance with the RFP or the University's Procurement Rules.

In our review, we did not highlight minor errors and flaws. No process can be completely free of errors or minor flaws. Indeed, the RFP expressly states that the University "reserves the right to waive minor informalities." RFP, Section 2.1.

Instead, our review focused on whether the process was free of significant errors or breaches that materially affected the integrity of the process. We identified the following significant problems in the RFP process.

⁶ In 2010, IMG Worldwide merged with ISP and formed IMG College.

1. All Evaluation Committee Members were not afforded a timely opportunity to formally vote in favor of the winning proposal, resulting in two of the six members ultimately not voting.

Our review found that Tim Bostonia, the Procurement Officer handling this process, sent notification to IMG College of its selection prior to receiving formal votes of approval from all members of the Evaluation Committee.⁷ During the December 3, 2012 conference call meeting of the Evaluation Committee, the offers from two proposers were considered and discussed. At the time, the overwhelming sentiment among the Evaluation Committee was to select IMG College. However, two of the committee members (Mike Parsons and Mike Szul) had additional questions, clarifications, and/or sought further information prior to a final vote. We found differing opinions among the committee members as to the finality of the vote during the conference call.

The Committee members uniformly agree that an email was sent following the meeting seeking a formal vote in favor of IMG. According to our review, only four members (Luck, Griffith, Peace, and Kite) responded to the email the day it was sent (December 3). Two members (Parsons and Szul) did not.

Despite the absence of votes from Parsons and Szul, Bostonia called IMG College on December 3, 2012 to inform them of the decision. Then, on December 4, 2012, Bostonia sent a letter to IMG College inviting them to engage in “substantive good faith negotiations.” To date, neither Parsons nor Szul have formally voted in favor of selecting IMG College, and the problem caused by their non-votes is addressed below.

2. The make-up of the Evaluation Committee was altered during the pendency of the evaluation process, and (when coupled with the lack of affirmative votes from Parsons and Szul) may have materially affected the outcome of the decision.

Our internal review revealed that the composition of the original Evaluation Committee was changed after the evaluation process had been initiated. From the time of the submission of the proposals, through Phase I of the evaluation, and for the initial portion of Phase II, the Evaluation Committee consisted of only three (3) voting members: Oliver Luck, Mike Parsons, and Mike Szul. Tim Bostonia and David Johnston were advisory only and had no voting power. But on October 12, 2013, Tim Bostonia contacted three

⁷ While the make-up changed during the course of the evaluation, the Evaluation Committee was ultimately comprised of the following individuals: Oliver Luck, Mike Parsons, Mike Szul, Robert Griffith, Steve Kite, and Graham Peace. All six had voting power on the Evaluation Committee. In addition, Procurement employee Tim Bostonia and David Johnston (Consultant from Rockbridge) served as technical advisors to the Evaluation Committee.

individuals (Robert Griffith, Steve Kite, and Graham Peace) and invited them to be members of the Evaluation Committee. Our review indicated that the three new members were selected by Oliver Luck. All three accepted appointment, and the Evaluation Committee expanded from three (3) voting members to a total of six (6) voting members. Bostonia and Johnston remained technical advisors and were not members of the committee. Our review found no indication of a discussion among the Evaluation Committee members about adding additional members to the Evaluation Committee.

This expansion came in the middle of the evaluation process. Two days before Bostonia reached out to Griffith, Kite, and Peace, the original three-member committee met and substantively discussed, evaluated, and began scoring the terms and the financial aspects of each proposal. This was the first primary meeting of Phase II proposal evaluation. During this meeting, the original committee decided to invite the proposers to individual 30 minute conference calls to clarify and present additional details. After this meeting, the committee expanded and the six-member committee completed the evaluation and reduction of the proposals down to three (3), then down to two (2), and then down to the one proposal.

On its face, the addition of the three members is not cause for any negative inference. By all accounts, the three members were active members in the evaluation process and contributed positively to the dialogue of the evaluation.

The additions, however, gain significance when considered together with the failure of Mike Parsons and Mike Szul to vote to approve IMG College. As two of the original three Evaluation Committee members failed to vote, but for the addition of Griffith, Kite, and Peace, it is unclear if IMG College would have been selected by a vote solely of the original three committee members.⁸

3. There was not strict adherence to the confidentiality/non-disclosure provisions of the RFP and University Rules.

Based upon our review, we discovered multiple communications between members of the University's Evaluation Committee and interested parties outside of the committee. While there is no evidence of improper motives or release of information that unduly prejudiced the process, the communications themselves were improper as they could suggest an appearance of improper motive or intent. **To be clear, our review uncovered no communication that directly impacted the evaluation process or constituted a material breach in the selection process.** Nonetheless, the communications should not have occurred and give rise to an appearance and/or inference of impropriety.

⁸ With respect to the failure of Parsons and Szul to vote, neither appears to have had a negative view of the IMG College proposal. Indeed, Mike Szul indicated his preference for IMG College. Rather, our review indicated that Mike Parsons was still not in favor of outsourcing the multimedia rights and Mike Szul was concerned about reaching true comparative financial numbers between the respective proposals and MSN.

Our review in this matter found communications occurred both during the official RFP process as well as prior to its public release. These communications included:

- (i) updates on the internal process as well as the status of the RFP prior to its public release; and
- (ii) non-substantive status updates after the public release of the RFP.

The Procurement Rules contemplate confidentiality, and members of the Evaluation Committee (a) were repeatedly counseled by the Procurement Office about confidentiality and (b) executed Non-Disclosure statements acknowledging their obligations to keep information confidential.⁹ Notwithstanding the clear admonitions, our review found the following communications that may be either in violation of the University's procurement rules and RFP procedural guidelines or give rise to a negative inference of impropriety.

We did not, however, identify any material benefit that may or may not have inured to the parties due to these communications. We simply identify them as a breach in policy; although we have found no evidence that any individual actually realized that they were violating such policy.

i. Evaluation Committee member Oliver Luck provided BOG Chair Andrew Payne RFP information/status updates about the RFP prior to the public release of the RFP.

Our review identified the following communications that occurred prior to the public release of the RFP on June 8, 2012:

(a) On December 20, 2011, Oliver Luck requested by email that his assistant, Cathy Martin, send the "WVU Master Model" to BOG Chair Andrew Payne. **(See Exhibit #11 in Appendix II).** The email additionally requested Cathy Martin share with BOG Chair Andrew Payne the analysis from Rockbridge Sports Group Consultant David Johnston relating to the current landscape of Tier Three Media Rights Market, financial information and projections for West Virginia University's Athletic Department and other Tier Three Media Rights related materials provided to Officials in the University's Athletics Department prior to the public release of the RFP.

(b) On May 3, 2012, Oliver Luck forwarded a draft of the RFP to BOG Chair Andrew Payne. The communication took place prior to the public release of the RFP.

⁹ With the exception of Oliver Luck, all members of the Evaluation Committee executed a Confidentiality & Conflicts of Interest Acknowledgement form. During the course of our review, we were unable to determine a reason for the lack of an executed Acknowledgement form by Oliver Luck.

(c) On May 4, 2012, BOG Chair Andrew Payne responded to Oliver Luck and congratulates him and expresses his satisfaction with the RFP. **(See Exhibit #12 in Appendix II).**

(d) On May 14, 2012, Oliver Luck sent BOG Chair Andrew Payne an email that contained an update on the RFP process stating that the RFP should be posted in “a couple days.” **(See Exhibit #13 in Appendix II).** On the same day (May 14, 2012), Oliver Luck received an email from Dale Miller at West Virginia Radio Corporation seeking a copy of the Request for Proposal for the multimedia rights. He responded “Dale-no problem. We’ll get that to you as soon as the lawyers give the go-ahead.” Following the public release of the RFP, on June 11, 2012, Oliver Luck directed Cathy Martin via email to send Dale Miller a copy of the RFP.

(e) On May 15, 2012, BOG Chair Andrew Payne responded to an email sent to him by Oliver Luck that contained an update on public release of the RFP. BOG Chair Andrew Payne thanked Committee Member Oliver Luck for providing him with the update on the RFP and displayed his curiosity relating to the range of bids. **(See Exhibit #14 in Appendix II).**

(f) On May 31, 2012, Oliver Luck updated via email BOG Chair Andrew Payne on the RFP and noted that minor revisions were being made prior to public release and that a final posting should be available to the public by “next week.”

ii. After the RFP was publicly released, Evaluation Committee member Oliver Luck provided non-substantive status updates to BOG chair Andrew Payne.

On June 20, 2012, Evaluation Committee member Oliver Luck forwarded an email to BOG Chair Andrew Payne that contained a discussion between himself and Associate Director Tim Bostonia about upcoming meetings to review various items related to the RFP. These items related primarily to the question and answer process with potential bidders of the RFP along with the process in which the University intended to approach them. Within the forwarded message to BOG Chair Andrew Payne, Committee member Oliver Luck stated to BOG Chair Andrew Payne, “This bureaucracy is killing us.” **(See Exhibit #15 in Appendix II).**

iii. Although he lacked actual knowledge of the proposals, BOG Chair Andrew Payne made public statements during the pendency of the process implying knowledge of the financial terms of the proposals and/or contract.

Although he was neither a member of the Evaluation Committee nor provided with information from the actual proposals, Mr. Payne made a public statement implying actual financial terms of an agreement. In particular, Mr. Payne stated that the IMG proposal “would net the University \$5 million more” than the University’s current contractual arrangements through MSN.

While the implication of knowledge is itself problematic, our review found that Mr. Payne's comments were nothing more than hyperbole. Specifically, we could find no evidence that Mr. Payne was ever provided with or obtained the actual financial terms or proposals. Mr. Payne also indicated that he had no actual numbers or financial information relating to the actual contract or proposal. Instead, he stated he derived the \$5 million number from multimedia rights contracts at other schools.

Notwithstanding the lack of actual knowledge of the proposals, the statement did create an inference that Payne was privy to confidential information. The inference further fueled an appearance of impropriety or potential conflict between his role as Chair of the BOG and his financial interests in WV Media. More importantly, as discussed in greater detail in Finding #4 below, Mr. Payne should have been recused from this situation, and never made any public statements on behalf of the University.

4. There was a failure of the Procurement Office and/or the Consultant to properly document conversations with proposers or potential proposers during the process.

In our review, we were informed that inquiries about qualifications took place between the University's consultant and potential proposers. The consultant, David Johnston, confirmed having conversations with multiple proposers, including representatives of WV Media and WV Radio. While our review could not locate any apparent impropriety in the conversations, we were unable to fully ascertain the timing, nature, or context of the conversations due to a lack of documentation.

The only documentation even referencing such a conversation was a June 18, 2012 email from Dave Johnston (consultant) to Oliver Luck stating that he had spoken with Bray Cary and that they intended to speak again in the coming days. **(See Exhibit #16 in Appendix II).**

We asked both Bray Cary and David Johnston about the conversation. While neither remembers the exact date, both suggested a conversation near the release of the RFP relating to the qualifications and WV Media.

Similarly, David Johnston mentioned a conversation with Dale Miller of WV Radio, but no documentation could be located.

5. The evaluation of the proposals did not conform to the RFP criteria, including specifically, the RFP Addendum requirement for weighted scoring.

During our review, we were unable to find documentary evidence reflecting formal scoring of the proposals at each stage of the proceeding. While the use of such scoring is not mandated in the RFP or the WVU Procurement Manual, the affirmative statement in RFP Addendum #1 placed a burden on the Evaluation Committee to comply with weighted

scoring. Our review did find that some scoring occurred in the early review of the proposals, but as the RFP process progressed, the decision-making occurred through group consensus and individualized scoring was abandoned.

Further, our review found only loose consideration of the identified criteria as the process progressed. The group consensus moved from the multi-faceted criteria outlined in the RFP to a singular focus on finances (generally) and guaranteed money (specifically). While it is not improper to ultimately shift focus throughout an evaluation of proposals, Addendum #1 imposed adherence to a weighted scoring throughout the process. Our review indicated this did not occur, ultimately resulting in confusion and ambiguity as to the finality of the vote (*see, e.g., Finding #1*).

6. There is no reason to conclude that the University's contracts with Rockbridge Sports Group violated procurement rules.

As a part of the overall media rights process at WVU three contracts were entered into by WVU and consultant Rockbridge Sports Group ("Rockbridge"). The three contracts with Rockbridge total approximately \$235,000 in value. Our review found no impropriety with the work provided or the qualifications of Rockbridge. A more significant issue was the procurement process in which Rockbridge was retained by the Athletic Department. In particular, none of the contracts were competitively bid, but were instead direct contracts between the Athletic Department and Rockbridge to provide a variety of services. Oliver Luck and ultimately Brenda Mowen, Chief Procurement Officer for the University, decided that these contracts fell within the "sole source" exception to the competitive bid process. The Office of Attorney General has found no reason to conclude that this decision was clearly wrong.

i. Scope of the three contracts

The first of these contracts began in September 2011, when WVU Athletic Director Oliver Luck contracted with Rockbridge to evaluate the financial aspects of MSN and the potential financial benefit of outsourcing the University's multimedia rights. In November 2011, Rockbridge produced its *Sponsorship and Multi-Media Rights Analysis* to Oliver Luck.

Thereafter, in or about February 2012, Oliver Luck again contracted with Rockbridge to assist in the drafting of the RFP at issue in this matter. Rockbridge remained engaged in this drafting process until the publication of the RFP in June 2012.

Thereafter, Oliver Luck initiated a third contract with Rockbridge to serve as a consultant in this matter.¹⁰ The term of this contract was from July 1, 2012 to June 30, 2013, and

¹⁰ A potential proposer to the RFP, Rockbridge agreed to serve as a consultant to WVU and not submit a proposal for the Rights.

remains in effect today. Under the terms of the contract, Rockbridge is paid a monthly retainer fee for the services provided.

ii. Sole source determination

The WVU Procurement Rules provide detailed guidance on competitive bidding for purchasing contracts. They require that “[c]ompetitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services and printing greater than \$25,000.” WVU Procurement Rule 5.3.1. The Procurement Rules set forth a detailed procedure that must be followed, including what must be included in the request for proposals and how bids must be submitted and evaluated. It also contemplates other competitive methods when appropriate (e.g., Requests for Proposal).

The competitive bidding process may be bypassed in the event that a company’s services are so unique that they cannot be provided by anyone else. The Procurement Rules provide that “[s]ole source and single source procurement are not permissible unless the materials, supplies, equipment, services and printing needed are available from only one supplier.” WVU Procurement Rule 5.28.1. The Rules make clear that “[s]ingle source procurement is permitted only when the goods and services are of such a unique nature that they cannot be acquired from any other source.” *Id.* The University’s Chief Procurement Officer decides whether procurement shall be made as a sole source. *Id.* at 5.28.2.

Our review found that the decision to seek a sole source determination on the contract occurred in September 2012 several months after the term of the contract began. Under the Procurement Rules, the Chief Procurement Officer, Brenda Mowen, is empowered to review and approve the sole-source justification.

By letter dated September 5, 2012, Mr. Luck justified the non-bid retention of Rockbridge as a single-source contract. **(See Exhibit #17 in Appendix II).** Mr. Luck stated he chose Rockbridge after “personally research[ing] and contact[ing] all known providers that may have been interested and qualified to provide the consulting services and which had experience in the higher education sports market.” Letter from Oliver Luck to Brenda Mowen, Sep. 5, 2012. Mr. Luck explained that “[t]he results of this research led to three potential providers of the scope of services being requested by [his] office.” *Id.* Mr. Luck determined that “[a]fter consideration, one firm was clearly unqualified” and another “was not interested due to reallocation of company assets and personnel into other sports marketing areas.” *Id.* Thus, Mr. Luck concluded, Rockbridge “was clearly the only choice the University had to proceed.” *Id.*

On September 25, 2012, Ms. Mowen thanked Mr. Luck for his submission and asked several follow-up questions. Email from Brenda Mowen to Oliver Luck, Sep. 25, 2012. **(See Exhibit #18 in Appendix II).** Mr. Luck responded by email further explaining his decision to enter into a contract with Rockbridge.

Rockbridge was ultimately approved as a sole source by Brenda Mowen, the WVU Chief Procurement Officer pursuant to the authority given by the Procurement Rules. Legitimate arguments can be made as to whether the Rockbridge contract was properly viewed as a sole source contract. However, given the good-faith efforts made by Oliver Luck to determine whether other potential candidates to provide these services existed there is no reason to conclude that this decision was clearly wrong. Additionally, it should be pointed out that our analysis has indicated that Rockbridge was knowledgeable and an ideal candidate to serve as consultant in the process. Indeed, our review indicated that Rockbridge has provided quality work to the University in this process.

FINDING #4: BOG Chair Andrew Payne should have recused himself from any and all participation in this matter and improperly continued to receive information about the process.

During the course of our internal review, we found multiple instances of BOG Chair Andrew Payne seeking and/or receiving information relating to the outsourcing of the multimedia rights. The receipt of this information included both his participation and remaining in the room during BOG executive session presentations about the progress of the RFP, as well as, individually, through his contact with Oliver Luck.

Our review further found, however, that Payne has both a financial interest in WV Media Holdings, and serves on an advisory board to the company. WV Media Holdings has current contracts with the University, and was, at various times in this process, a potential proposer or interested party to the multimedia rights RFP.

As a gubernatorially appointed member of the WVU Board of Governors, Payne is subject to the policies and procedures of the BOG and the Procurement Manual. In particular, the BOG's Operating Procedures state, in relevant part:

[E]ach member of the Board has an ongoing obligation to disclose at the earliest practicable time all conflicts and potential conflicts and appearances of impropriety, and any such actual or potential conflicts must be addressed pursuant to applicable law and the procedures set forth herein. An interested member shall fully disclose in writing any such conflict or potential conflict, including all pertinent facts, to the Chairman; or, in the case of the Chairman, to the University's Vice President for Legal Affairs promptly after becoming aware of such a conflict or potential conflict.

* * *

In the event of a conflict or potential conflict, the interested member shall neither participate in or be present during any discussion by the Board regarding the matter in conflict; provided, however, that the Board may elect in its discretion to seek information or clarification from the interested member. The interested member

shall abstain from all votes on any such matter and the disclosure of such a conflict and the member's recusal shall be recorded in the minutes of the affected meeting.

Section 1.14 Conflicts of Interest. The WVU Procurement Manual further states, in relevant part:

Except as may be authorized by the provisions of [the West Virginia Ethics Act]: (1) neither the Governing Board, nor any employee of the Governing Board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them; . . .

Under the Ethics Act, in order for a public official's recusal to be effective, "it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue." W.Va. Code § 6B-2-5(j)(3).

Payne should have disclosed his financial interest in WV Media and recused himself from voting, discussing, and participating in the RFP process.¹¹ To be clear, we found no evidence of improper use or benefit of the information or of improper disclosure of information to the benefit of a proposer/potential proposer. Furthermore, it was never envisioned that the contract would be approved by the Board of Governors. However, the pursuit/receipt of information relating both to the current contracts and status of MSN, the outsourcing of multimedia rights generally, and this particular RFP specifically was in and of itself improper given his relationship to WV Media.¹²

FINDING #5: BOG Member Alvarez did not adhere to the BOG Operating Procedure relating to conflicts of interest or recusal.

Similar to BOG Chair Andrew Payne, BOG member David Alvarez also failed to properly recuse himself during BOG meetings. While our review found no specific communication

¹¹ Drew Payne states that he was not aware of WV Media's involvement in this process at the time.

¹² Since recusal is required under either outcome, this report did not analyze W.Va. Code § 18B-5-6 or W.Va. Code § 6B-2-5(d) relating to the prohibited financial interests in a public contract. However, given the BOG's delegation of its powers and control to the WVU President "to contract on behalf of the Board", it is questionable whether a BOG member retains sufficient "direct authority or control" over the letting of the contract for the provisions of W.Va. Code § 6B-2-5(d) to apply. See W.Va. Code § 18B-2A-4(s) and BOG Resolution adopted (as amended) Feb.8, 2002. **(Copy of the Resolution attached hereto as Exhibit # 19 in Appendix II).**

on an individual level with Oliver Luck or members of the Evaluation Committee, Mr. Alvarez has a financial interest in WV Media Holdings. For the same reasons as Payne, Alvarez should have recused himself during executive session presentations and/or other board action relating to current MSN contracts or future outsourcing of the multimedia rights.¹³

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. All current proposals should be rejected and the multimedia rights matter should be re-bid.

We recommend that the University invoke the provision of the RFP that permits rejection of all proposals. The RFP in this matter expressly reserved the right of the University to "reject any and all proposals, wholly or in part..." See RFP p. 10 Section 2.1.1. The process for the rejection of proposals is governed by Rule 5.26 of the West Virginia University Procurement Rules, and authorizes the University to reject all bids after opening but prior to an award based upon a written finding by the Chief Procurement Officer that such action is in the University's best interest. See Rule 5.26.2.

The Office of Attorney General reaches this conclusion based upon the stated findings in Section VII, including the failures to recuse and the alteration of the Evaluation Committee. It is our conclusion that the errors and findings expressed in Section VII collectively give rise to negative inferences that create an inescapable appearance of impropriety. We believe the interests of the West Virginia University would be best served by a rejection of the current bids followed by a re-bid of the multimedia rights. While our Office finds no impropriety with the selection of IMG College on substantive grounds, the procedural errors surrounding the RFP process are of sufficient magnitude to warrant a re-bid.

B. All proposers should be allowed to participate in the re-bid process.

The Office of Attorney General has identified no conduct on the part of any proposer or potential proposer that would justify or necessitate the elimination of said proposer from further participation in the bid process. Rather, the conduct giving rise to the findings in Section VII were the product of members, employees, and agents of the University, and not any outside entity or individual. Accordingly, in the re-bid of the sponsorship and multimedia rights, no proposer, or prior potential proposer, shall be disqualified solely because of the conduct giving rise to and documented in this internal review.

¹³ Alvarez states he was not aware of WV Media's involvement until he read about it in the press.

C. The confidentiality of submitted bid documents should be maintained.

Under West Virginia law, none of the bid documents are subject to public disclosure at this time. Section 5.22.3 of the West Virginia Procurement Rules indicates that information derived from proposals shall not be disclosed “until after an award has been made.” As no award has been made, all bid proposals are still confidential and should not be disclosed until an award, if any, is made in a re-bid. In addition, such information would be protected from disclosure under FOIA rules by West Virginia Code §29B-1-4a(5), as the WVU Procurement Rules specifically authorize confidentiality pursuant to West Virginia Code §18B-5-4. In addition, some portion, if not the entirety of the proposals, would also be protected from disclosure by West Virginia Code §29B-1-4a(1).

D. Elimination of identified issues in procurement process.

Affirmative steps should be taken by the University during the process of re-solicitation and evaluation of proposals to ensure that the problems identified in Section V and this internal review are addressed and removed in this and future Procurement matters. Of particular importance, the University should formally address the divergent views within the University as to the competitive bidding of revenue generating contracts. Our internal review found comparable higher education institutions that have implemented specific policies relating to revenue generating contracts. See e.g. Florida State University. Of those reviewed, most placed discretion with the institution’s Office of General Counsel, and others established a hybrid approach where certain contracts above a certain dollar amount had to be pursued through a competitive process.

E. The University should more proactively evaluate and assist its BOG members, officers, and employees in adhering to the recusal requirements and/or avoidance of participation in matters in which he or she may have a potential financial interest.

During the course of our review, the delegation of powers by the BOG to the President (and his respective officers and directors) appears to have reduced the concern about individual board member conflicts of interests or of potential financial interests. As evidenced in this matter, better identification and consideration of potential conflicts of interest should be undertaken by the University.

IX. CONCLUDING STATEMENT

As evidenced by the recent publicity in this matter, the decision to out-source the University's sponsorship and multimedia rights has a significant impact upon both the University and entities outside the University. With looming expirations of contracts, and questions about the appropriate path forward, the Office of Attorney General has engaged in a comprehensive, expedited review of this RFP process. We have attempted to provide findings, conclusions, and recommendations to promptly resolve any issues raised and correct any erroneous conduct.

Our Office will continue to examine the remaining aspects of this matter and will submit an additional in the near future.

RESPECTFULLY SUBMITTED,

OFFICE OF THE ATTORNEY GENERAL

PATRICK MORRISEY
Attorney General

APPENDIX I

Given the issues and allegations in this matter, we identified the following statutes, rules and policies relevant and/or controlling in this RFP process:

A. Statutory

1. Higher Education Purchasing

W.Va. Code § 18B-5-4 (purchase or acquisition of materials)

W.Va. Code § 18B-5-5 (competitive bids for services)

W.Va. Code § 18B-5-6 (Prohibited Financial Interest by BOG member/employee in contract)

W.Va. Code § 18B-5-9 (Fiscal Responsibility)

2. WV Ethics Act

W.Va. Code § 6B-2-5(d) (Prohibited interest in a public contract)

W.Va. Code § 6B-2-5(j) (Recusal)

B. WVU Board of Governors' Operating Procedures

1.14 Conflicts of Interest

C. WVU Board of Governors' Policies/Resolutions

Policy 10: Student Rights & Responsibilities

BOG Resolution delegating certain duties and powers to the President

D. WVU Procurement Manual (2006)

APPENDIX II

Index of Exhibits

1. RFP
2. Addendum 1 to RFP
3. Addendum 2 to RFP
4. Addendum 3 to RFP
5. Addendum 4 to RFP
6. Addendum 5 to RFP
7. Addendum 6 to RFP
8. Confidentiality Acknowledgement of Original Three Evaluation Members
9. Confidentiality Acknowledgement of Additional Three Evaluation Members
10. December 3, 2012 email from Tim Bostonia to evaluation committee members
11. December 20, 2011 email from Oliver Luck to Cathy Martin
12. May 4, 2012 email from Andrew Payne to Oliver Luck
13. May 14, 2012 email from Oliver Luck to Andrew Payne
14. May 15, 2012 email from Andrew Payne to Oliver Luck
15. June 20, 2012 email from Oliver Luck to Andrew Payne
16. June 18, 2012 email from Dave Johnston to Oliver Luck
17. September 5, 2012 letter from Oliver Luck to Brenda Mowen
18. September 25, 2012 email from Brenda Mowen to Oliver Luck
19. February 8, 2002 WVU Board of Governors Resolution

West Virginia University
Procurement, Contracting and Payment Services
Request for Proposals 90002782X
Athletic Sponsorship and Media Rights

Return Proposals to:

Fax: 304-293-7193

West Virginia University

Email: mtbostonia@mail.wvu.edu

Attn: Tim Bostonia

Publication Date: 6/8/2012

One Waterfront Place, 3rd Floor

PO Box 6024

RFP PHASE II DUE DATE: 8/31/2012

Morgantown, WV 26506

RFP DUE TIME: 4:00 p.m. EST.

Phone: 304-293-8443

RFP IDENTIFICATION NUMBER: 90002782X

Name of Firm: Enter Firm Full Name ("Offeror")

Firm Contact: Enter Firm Contact Responsible for this RFP

Phone: Enter Firm Phone Number

Fax: Enter Firm Fax Number

Email: Enter Email Address

Mailing Address: Enter Address

Enter Address

Enter City,

Enter State

Enter ZipCode

Signature of Authorized Agent: _____ Date: _____

Proposals are being accepted by the West Virginia University Board of Governors on behalf of West Virginia University for athletic sponsorship and media rights services. See Specifications in the Request for Proposals ("RFP").

West Virginia University shall not be liable for any costs incurred by an Offeror in responding to this RFP, regardless of whether the University awards the Contract through this process, cancels this RFP for any reason, or contracts for the Project through another RFP or another process.

By submitting a proposal in response to West Virginia University Request for Proposal Number 90002782X to provide Multi-Media and Marketing Services, the Offeror certifies the following:

1. The proposal has been developed independently, without consultation or agreement with any employee or consultant of the University who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee;

2. The proposal has been developed independently, without consultation, communication or agreement with any other vendor or parties for the purpose of restricting competition;
3. No attempt has been made or will be made by Offeror to induce any other Offeror to submit or not to submit a proposal for the purpose of restricting competition;
4. No relationship exists or will exist during the contract period between Offeror and the University that interferes with fair competition or as a conflict of interest; and
5. Offeror has not and will not offer or give any gratuities (in the form of entertainment, gifts, or otherwise) directly or indirectly, to any person or employee of the University with a view toward securing favorable treatment in the awarding of any potential contract resulting from this solicitation.

SUBMISSION

This RFP is being conducted in two (2) Phases. Phase I is Mandatory Pre-Qualification. Phase II is submission of sealed Proposals.

Mandatory Pre-Qualification Information: Offerors must complete the enclosed Appendix III, Mandatory Pre-Qualification Information and Requirements. Failure to complete and return these forms by 7/2/2012 will result in Offeror being considered non-responsive to Phase I and unable to proceed to Phase II. Offeror must also complete and execute Appendix IV, Reciprocal Non-Disclosure Agreement and submit with the required Pre-Qualification Information.

Phase II Proposals must be submitted in a sealed envelope, plainly marked "Proposal No. 90002782X & Subject of RFP" [ATHLETIC SPONSORSHIP AND MEDIA RIGHTS] along with the Offeror's name and date and time of the scheduled opening. West Virginia University, its employees, officers or agents shall not be responsible for any pre-opening or post-opening of any proposal not properly addressed and identified. Proposals made in pencil or forwarded using e-mail and the internet will be rejected.

Phase II Proposals are due no later than 8/31/2012, at 4:00 p.m., EST Time. Proposals must be submitted to:

West Virginia University
Attn: Tim Bostonia
One Waterfront Place, 3rd Floor
PO Box 6024
Morgantown, WV 26506

An Offeror who mails a Proposal should allow adequate mailing time to ensure its timely receipt. The University may, in its sole discretion, reject late Proposals regardless of the cause for the delay.

LIABILITY

Offeror agrees to indemnify and save and hold the University, its agents and employees harmless from any and all claims or causes of action arising out of this RFP by Offeror or Offeror's agents or employees.

DISCLAIMER

This Request for Proposal ("RFP") does not obligate West Virginia University to award a contract or complete the proposed project, and WVU reserves the right to cancel this RFP with or without cause or notice. Proposals must be clear and concise. Proposals that are difficult to follow or that do not conform to the RFP format or binding specifications may be rejected.

Responding Offerors must include the required information called for in this RFP. WVU reserves the right to reject a proposal if required information is not provided or is not organized as directed. WVU also reserves the right to change the evaluation criteria or any other provision in this RFP by posting notice of the change(s) on the Department of Procurement, Contracting, and Payment Services Web Site: <http://www.wvubids.finance.wvu.edu>. For this RFP, posting on the captioned web site above constitutes written notification to each Offeror. Offerors should check the site daily and are expected to review information on the site carefully before submitting a final proposal.

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Section I: General Information

West Virginia University (“WVU” or “University”) in Morgantown, West Virginia is requesting, on behalf of its Department of Intercollegiate Athletics, proposals from experienced firms for the management and sale of WVU’s sponsorship and multi-media-rights (“Proposals”). The University has traditionally managed these rights in-house through a combination of University resources and out-sourced production and media partnerships working collectively together under the Mountaineer Sports Network (“MSN”) brand. WVU is evaluating the opportunity to enter into an agreement that would license various rights as further described herein (“Contract”). The University’s primary objective is to select a partner whose overall plan and financial offer delivers the greatest value to the University. Each firm (hereinafter “Offeror”) will develop and implement a quality, comprehensive, and nationally marketed program that would utilize a variety of marketing rights and sponsorships which represent the best interests of WVU and provides the best overall Proposal. **Appendix 1** provides an overview of WVU’s sponsorship and media assets. **Athletic apparel rights are not part of this RFP.** Firms are encouraged to expand upon and provide as much detail as possible on the specific rights and assets required to achieve the primary objective of the RFP.

West Virginia University

As a land-grant institution in the 21st century, West Virginia University delivers high-quality education, excels in discovery and innovation, models a culture of diversity and inclusion, promotes health and vitality, and builds a pathway for the exchange of knowledge and opportunity between the state, the nation, and the world.

In 1862, the U.S. Congress passed and President Abraham Lincoln signed the first Land-Grant Act (also known as the Morrill Act for its sponsor, Rep. Justin Morrill of Vermont). On October 3, 1863, the West Virginia Legislature voted to accept a grant of land totaling 150,000 acres from the federal government. Funds from the sale of this land were used to establish WVU in 1867.

The purpose of the Land-Grant Act was “the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.”

In 1890, the second Morrill Land-Grant Act led to the creation of many of America’s historically black colleges and universities. Today, there are 76 land-grant universities that trace their beginnings back to the 1862 or 1890 Land-Grant Acts. These universities, including WVU, constitute the core membership of the Association of Public and Land-Grant Universities (“APLU”).

WVU is proud of its history as a land-grant university and remains dedicated to its land-grant mission of promoting access to higher education and applying research to meet the needs of West Virginians. The land-grant mission is at the core of WVU’s identity as a university, from the Extension Service and Engineering to Public History and Health Sciences. Every WVU college and unit, from Morgantown to Montgomery and Charleston to Keyser, is an integral part of WVU’s land-grant past and future.

As a Research University (High Research Activity) as classified by the Carnegie Foundation for the Advancement of Teaching, WVU faculty conduct \$177.7 million annually in sponsored contracts and research grants. Accredited by the North Central Association of Colleges and Schools and dozens of specialized academic agencies, WVU operates on a budget approaching \$955 million a year.

Located in Morgantown, W.Va., population 28,654, recently rated “No. 1 Small City in America” by BizJournals.com for its exceptional quality of life. Within easy traveling distance of Washington, D.C., to the east, Pittsburgh, Pa., to the north, and Cleveland and Columbus, Ohio, to the northwest.

Other recent rankings: One of “Best Sports Cities” by Sporting News; 5th “Best Small Metro” by Forbes; 12th overall “Hottest Small City by Inc.”; and one of “50 Smartest Places to Live” by Kiplinger’s; one of the “Best Cities for Jobs” by MSN Careers; one of the 50 best places to launch a small business by CNNMoney.com; and the second-ranking “Best College Town for Jobs” by Forbes.

WVU is home to more than 8,373 faculty, staff, and graduate assistants serving 29,617 students through 13 colleges and schools offering 191 bachelor’s, master’s, doctoral, and professional degree programs in the arts and sciences; business and economics; creative arts; engineering and mineral resources; human resources and education; journalism; law; agriculture, natural resources and design; dentistry; medicine; nursing; pharmacy; physical activity and sport sciences.

WVU is known for its academic excellence which over the years has produced: 24 Rhodes Scholars, 22 Truman Scholars, 33 Goldwater Scholars, two British Marshall Scholars, two Morris K. Udall Scholars, five USA Today All-USA College Academic First Team Members (and 11 academic team honorees), eight Boren Scholars, five Gilman Scholars, 27 Fulbright Scholars, and one Jack Kent Cooke Foundation Graduate Scholar.

Office of Trademark and Licensing

West Virginia University operates with annual royalty revenues averaging more than \$3.1 million over the last year. While West Virginia University Department of Intercollegiate Athletics shares in licensing revenue distribution, trademark licensing is operated independently under the University’s Office of Trademark Licensing. Further, the University has contracted with Collegiate Licensing Company to manage its trademarks. Trademark licensing rights are not part of the RFP, and additional negotiated agreements may be necessary to obtain promotional or licensing rights not specifically addressed in the RFP. Despite having independent operations, a cooperative, mutually beneficial spirit of partnership exists between Trademark Licensing and WVU Department of Intercollegiate Athletics as it relates to sponsorships, advertisers, marketing and promotions.

Department of Intercollegiate Athletics

The Department of Intercollegiate Athletics at West Virginia University sponsors 17 varsity sports with more than 500 student-athletes competing in baseball, men’s and women’s basketball, women’s cross country, football, women’s gymnastics, women’s indoor and outdoor track, rifle, men’s and women’s soccer, men’s and women’s swimming and diving, women’s tennis, women’s volleyball, women’s rowing and wrestling.

These sports compete in some of the finest facilities in the nation. Mountaineer Field at Milan Puskar Stadium, which underwent a renovation in 2004 that included the addition of stadium suites and club seating and seats 60,000 fans, is the home of Mountaineer football. The Coliseum sports complex includes the 14,000-seat WVU Coliseum, home to men’s and women’s basketball, women’s gymnastics, women’s volleyball and wrestling; men’s and women’s soccer compete at Dick Dlesk Soccer Stadium; women’s tennis plays at the Coliseum Courts; men’s and women’s swimming and diving utilize the WVU Natatorium and women’s track runs on the Mountaineer Track.

Beginning with the 2012-13 academic year, West Virginia University will compete in the Big 12 Conference in all sports except men’s soccer (Mid-American Conference) and rifle (Great American Rifle Conference), and strive in its athletics program for national excellence and prominence. Accordingly, the recruitment of student-athletes and emphasis on and support of athletics are national in scope.

The Department of Intercollegiate Athletics subscribes to high standards of academic quality as well as breadth of academic opportunities. More than 4,000 student-athletes have earned a place on the Athletic Director’s Honor Roll by attaining at least a 3.0 grade point average since its inception in 1989.

During the 2010-11 athletic season, WVU finished 37th in the Directors' Cup ranking of all Division I intercollegiate athletic programs and has posted four straight Top 50 finishes in the Directors' Cup.

The Mountaineer football team has been to 10 straight bowls with three BCS bowl victories including its 70-33 win in the 2012 Discover Orange Bowl.

The Mountaineer men's basketball team, led by Coach Bob Huggins, has appeared in five consecutive NCAA Tournaments including an appearance in the 2010 NCAA Final Four and a No. 3 national ranking.

The women's basketball team has made the NCAA tournament in five of the last six years and has won 20+ games in five of the last six years.

Women's soccer has competed in the NCAA Tournament 12 consecutive years –ninth longest streak in the nation – and has won three conference championships during the past five seasons.

WVU gymnastics has made eight straight NCAA appearances and 28 overall. In addition, the Mountaineers have claimed six conference championships.

WVU had eight first-team All-Americans during 2011 in four different sports.

The University is committed to financing the athletics program from revenues generated by the Department of Intercollegiate Athletics and it shall conduct its program consistent with the letter and spirit of the NCAA and the mission of West Virginia University.

Nature of RFP

The University's primary objective, through the RFP process, is to select a partner whose overall plan and financial offer delivers the greatest value and net revenue to the University. Prospective partner must demonstrate expertise, experience, financial stability, and a proven record of success in driving revenue through the management and sale of a university's sponsorship and media assets.

RFP Process

Phase I.

PRE-PROPOSAL CONFERENCE CALL

The University will hold a pre-proposal conference call for all Offerors. The pre-proposal conference call will be held at 10:00 a.m. local time, 6/22/2012. The dial in number for the conference call is: **866-846-3997**; the passcode is: **555438**. During the pre-proposal conference call, prospective Offerors pre-submitted questions concerning the RFP process will be answered and if time allows the University will address other procedural questions, if any. Please submit questions no later than 4:00 p.m. local time on 6/20/2012 as specified in Section 2.2.

MANDATORY PRE-QUALIFICATION PROCESS

Interested Offerors are required to provide information and/or data that will be considered by the University as described in APPENDIX III and IV. which are due by 4:00 p.m. EST on 7/2/2012. The University intends to invite qualified Offerors to submit formal proposals in response to this RFP. No person or Offeror shall submit a Proposal to the University unless and

until it has received a written invitation from the University to do so. Any RFP proposal received from a proposer not invited as a pre-qualified proposer will not be considered.

Phase II.

Selected Offerors qualified under Phase I shall be invited to submit Proposals to the University pursuant to the terms and conditions of this RFP. This RFP is part of a competitive process intended to serve the University's best interest, while allowing potential partners the opportunity to propose creative operating plans and supporting financial proposals that meet the RFP's primary objective. Offerors are strongly encouraged to provide as much detail as possible on all aspects of their plans, including short and long term revenue projections and proposed programming and distribution requirements and associated financial liabilities.

The competitive procurement process shall include an evaluation of the overall plan and approach to the management and sale of the University's assets outlined in Appendix 1, the guaranteed and prospective financial return to the University, and such other information available to the University as set forth in this RFP.

This RFP provides instructions for submitting proposals, the procedure and criteria by which a company may be selected, and general contractual terms and conditions which shall be included in any resulting contract.

Phase II Proposals must remain in force for one hundred eighty (180) days from the opening date to allow for evaluation. The University reserves the right to reject any and all proposals, wholly or in part, and to waive any minor technicalities, informalities, or irregularities in any proposal.

Selection and Tentative Implementation Timeline

Publish RFP:	6/8/2012	
Submit Pre-Proposal Conference Call Questions:	6/20/2012	4:00 PM EST
Conduct Pre-Proposal Conference Call:	6/22/2012	10:00AM EST
Pre-Qualification Statements Due:	7/2/2012	4:00 PM EST
Notification of Qualified Offerors:	7/17/2012	4:00 PM EST
Round 1 Questions Due (4:00 PM EST):	7/20/2012	4:00 PM EST
Pre-Proposal Conference On-Site/Round 1 Answers/Round 2 Questions Due:	8/7/2012	1:00 PM EST
Target Date to Answer all Questions:	8/15/2012	
Deadline for RFP proposal Submission:	8/31/2012	4:00 PM EST
Finish Evaluations:	9/28/2012	
Presentations (If required) Two week window starting:	10/1/2012	
Complete Selection Process:	10/19/2012	
Approximate deadline for executing Contract:	12/7/2012	

The University may, in its sole discretion, change this schedule at any time. If the University changes firm dates in the schedule before Contract award, it will do so by an addendum to this RFP. Changes in the Project schedule after the Contract award will be made through the amendment provisions in the General Conditions of the Contract. It is each prospective Offeror's responsibility to check with the University for current information regarding this RFP and its implementation timeline.

- a. All Offerors should participate in the pre-proposal conference call at 6/22/2012 at 10:00 am EST. The dial in number for the conference call is: **866-846-3997**; the passcode is: **555438**. The intent of the call is to highlight the overall goals and objectives of the University and to answer any questions about the RFP process, not to address any technical specifications of the proposal.
- b. Round 1 Questions from Selected Pre-Qualified Offerors that address technical specifications are due by 4:00 PM EST on July 20, 2012. Note that answers to questions submitted by Offerors either in writing during Round 1 or 2 or during the On-Site Pre-Proposal Conference will be shared with all Offerors.
- c. Pre-Qualified Offerors are required to attend the mandatory on site pre-proposal conference at 1:00 PM EST on 8/7/2012 at the WVU Coliseum located at the intersection of Monongahela Blvd. and Patteson Dr. Morgantown, WV. Failure of an Offeror to satisfy this requirement will invalidate their Proposal.
- d. If during the pre-proposal process any item requires clarification, the University reserves the right to issue a written addendum to provide clarity to the Offerors. Any changes to the specifications and contract terms and conditions will be issued in a written addendum to all Offerors.
- e. In order to maintain the competitive nature of the proposal process, the University reserves the right to cancel any pre-proposal activity (conference call or on-site visit) when fewer than two companies are in attendance.
- f. Following the mandatory pre-proposal meeting prospective Offerors will be allowed to attend an optional tour of University's Athletic Facilities, and ask questions concerning the RFP specifications.

Section II: RFP Provisions

- 2.1 **Proposal Rejection and Waiver of Informalities:** This RFP does not obligate West Virginia University or its Board of Governors to award a contract or complete the proposed project and each reserves the right, in its sole discretion, to cancel this RFP. West Virginia University also reserves the right to waive minor informalities and, notwithstanding anything to the contrary, reserves the right to:
- 2.1.1 reject any and all proposals received in response to this RFP;
 - 2.1.2 negotiate any aspect of the proposal with any Offeror;
 - 2.1.3 terminate negotiations and select the next most responsive Offeror for contract negotiations;
 - 2.1.4 terminate negotiations and prepare and release a new RFP;
 - 2.1.5 terminate negotiations and take such action as deemed appropriate.
- 2.2 **Obtaining Information.** Except for current business relations unrelated to this RFP or the awarding thereof, Offerors are specifically prohibited from contacting any individual at, or associated with the University regarding this RFP. Offeror communication shall be limited to the Department of Purchasing, Contracts, and Payment Services contact named on the cover page of this document or other authorized representative as specifically identified by the University. An Offeror's failure to adhere to this prohibition may, at the University's sole discretion, be disqualified. No negotiations, decisions, or actions shall be executed by any Offeror as a result of any oral discussions with any University employee or University consultants. **Only those communications that are in writing or received via email communications by an authorized representative of the Offeror shall be considered valid. All communication should be through the University contact(s) identified below. Official questions may be submitted to:**
- West Virginia University
Attn: Tim Bostonia
One Waterfront Place, 3rd Floor
PO Box 6024
Morgantown, WV 26506
- Phone: 304-293-8443
- Email: mtbostonia@mail.wvu.edu
- 2.3 **Addenda to RFP.** Should an inquiry prompt the University to amend the RFP, the University will publish written notice to each Offeror. All Addenda will be deemed to have been validly given if the Addendum is issued and posted to www.wvubids.finance.wvu.edu or otherwise furnished to each Offeror's contact person of record. When an Addendum to this RFP is necessary less than five (5) days before the Proposal deadline, the University may extend the Proposal deadline. The University may make reasonable attempts to contact all Offerors; however, it is the responsibility of each Offeror to check for announcements, Addenda, and other current information regarding this RFP.
- 2.4 **Notice to Offeror.** Each Offeror is solely responsible for the accuracy and completeness of the proposal. Errors or omissions may be grounds for rejection, or may be interpreted in favor of the University. The University reserves the right to solicit additional information from Offerors to determine which Offeror's proposal best meets the needs of the University. Additional information may include, but not limited to, past performance, records, references, current projects or any other information deemed by the University pertinent.

- 2.5 Acknowledgement. By submitting Proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The Offeror also agrees that the Contract shall be the complete and exclusive statement of the agreement between the University and the Offeror and shall supersede all communications between the parties regarding the Contract's subject matter.
- 2.6 Proprietary Information. Information provided in Proposals will be held in confidence during the evaluation period and prior to the time that any contract is awarded and finally executed. All material submitted becomes the property of the University and may be returned only at the University's option. Proposals submitted become the property of the University and may be reviewed and evaluated by any person at the discretion of the University, regardless of statements to the contrary contained within the Offeror's response. The University has the right to use any or all concepts presented in any reply to the RFP, unless those concepts are protected by legal patent or other proprietary rights as stated by the Offeror and clearly marked as such. Selection or rejection of the proposal does not affect this right. Information provided by the University to the requesting Offeror for the purpose of providing a response to this RFP is the property of the University. As such, said information is to be kept in confidence and used only for the intended use of this RFP. All such information submitted in response to this RFP shall be subject to the West Virginia Freedom of Information Act and other applicable laws and regulations. Offerors should review any such laws and take applicable measures to protect any confidential or proprietary information to the extent such laws and regulations may allow.
- 2.7 Right to Inspect. The University reserves the right to inspect and investigate thoroughly the establishment, facilities, equipment, business reputation, and other qualifications of the Offeror and any proposed Subcontractors and to reject any Proposal irrespective of price if it shall be determined that the Offeror is deficient in any of the essentials necessary to assure acceptable standards of performance. The University reserves the right to continue this inspection procedure throughout the life of the Contract that may arise from this RFP.
- 2.8 Amendments to Proposals. Amendments or withdrawals of Proposals shall be allowed only if the amendment or withdrawal is received before the Proposal deadline. No amendment or withdrawal shall be permitted after the Proposal deadline, except as authorized by this RFP.
- 2.9 Proposal Format. Proposals must address all aspects of the RFP and should follow the chronology of the RFP. Provide one (1) unbound original full color submissions of your Proposal; The unbound original should clearly be labeled "MASTER"; and one (1) copy in CD or flashdrive format. Should a discrepancy arise between copies of the response, the information contained in the "MASTER" copy shall prevail.
- 2.10 Authorized Signature. Proposals must be completed and signed in the corporate name of the Offeror, and must be fully and properly executed and signed in blue or black ink by an authorized representative of the Offeror. Proof of authority of the person signing must accompany the response.
- 2.11 Duration of Offer. Proposals must indicate they are valid for a minimum of one hundred eighty (180) calendar days from the date of the proposal opening unless extended by mutual written agreement between West Virginia University and the Offeror.
- 2.12 Publicity. It is also agreed that no publicity matter, including representations to outside parties, having or containing any reference to West Virginia University, or in which the name is mentioned, shall be made by an Offeror or anyone on the Offeror's behalf unless and until the same shall have first been submitted to, and received the written approval of, an authorized representative of the University.
- 2.13 Best and Final Offer. The University reserves the right to request a best and final offer(s) from the finalist Offeror(s) if the University deems such an approach necessary. In general, the best and final offer(s) would consist of additional negotiation as well as answers to specific questions that may be identified during the evaluation of proposals.

If the University chooses to invoke this option, selected Proposals would be re-evaluated by incorporating the information requested in the best and final offer document and answers to specific questions presented in the document. The specific format for the best and final offer would be determined during evaluation discussions. Turnaround time for responding to a best and final offer(s) request is usually brief (e.g., not to exceed five (5) business days).

- 2.14 Contract Award. The University will review all responsive and qualified Proposals submitted, and based upon the analysis of the Proposal as presented by the Offeror, University reserves the right to award a contract based on its sole determination. University reserves the right to reject any or all Proposals. If the Offeror has a preferred contract form, a copy of such Offeror's contract must be submitted with the Proposal.

After the full and complete evaluation of Proposals, if there is one Proposal which has, in the opinion of the University, best demonstrated competence, qualification, and deemed to be the most advantageous to the University, the University and selected Offeror will enter into negotiations in an effort to arrive at mutually agreeable terms and conditions.

The contents of the proposal of the selected Offeror may become contractual obligations if a contract is accepted and signed by both parties. Failure of the selected Offeror to accept these obligations in a contract may result in cancellation of this award and such Offeror may be removed from future solicitations. Under these conditions, the University reserves the right to award this RFP to the next ranking Offeror. The University will demonstrate "good faith" in reaching a mutually acceptable contractual agreement. Notwithstanding this, there are certain conditions that are unacceptable to the University.

Following is a non-exclusive list of unacceptable terms:

- Governing law other than the State of West Virginia.
- Clauses requiring the University to indemnify and hold harmless the successful respondent.
- Clauses that unduly restrict or place unacceptable claims of ownership on data which are the subject of the agreement/ contract.
- Clauses relating to requiring the University to enter into reimbursement arrangements relative to attorney's fees.
- Insurance coverages and limits that different than listed in this RFP.

Section III: Phase II Proposal Requirements/Contents of the Proposal

Selected/Invited Offerors are required to submit a Proposal for conducting activities and delivering the services specified within the RFP specifications. All Proposals must be submitted strictly in accordance with the requirements of this RFP. Failure to include any information requested may result in a proposal being disqualified as nonresponsive and removed from consideration in the contract award. All potential Offerors will meet the requirements specified below and submit the required information within their Proposals.

WVU reserves the right to include all or a portion of the components provided in Appendix 1 under a final contract award per this RFP. WVU also reserves the right to not accept any Proposal and not award a contract to any Offeror.

The University requires that Offerors include the following in their proposals:

1. Cover/signature page signed by a representative authorized to bind the firm to all obligations outlined in the RFP and proposal, including an acknowledgement of and commitment to complying with all Mandatory State of West Virginia contractual terms and conditions as identified in this RFP in addition to any terms and conditions negotiated between the University and potential firm as a result of this RFP process.

2. Strategy and detailed operational plan for the production, distribution, sale and fulfillment of WVU's sponsorship and multi-media rights, including detailed inventory/asset list and sponsorship categories required to support any revenue performance statements and financial models offered by Offeror.
3. Detailed staffing plan, including corporate/regional leadership and local dedicated personnel (management, sales, production, talent, etc.), along with any expectations from current University employees and/or staff that provide services associated with the University's MSN-branded operations.
4. Capital improvement and new inventory plan, including financial commitment if applicable, to support revenue performance statements offered by Offeror.
5. Project timeline, including key activities and dates during the start-up period (contract signing through the end of the first full athletic season.)
6. Detailed Revenue Proforma for the proposed term of five (5) years and for two (2) continuous five (5) year renewal periods.
7. Detailed list of all known and anticipated expenditures/liabilities associated with the production, sale and fulfillment of the assets that support the Revenue Proforma, including identification of each as an Offeror or University responsibility.
8. Financial offer and proposed term.
9. Additional benefits – media, value-in-kind, and other benefits that add value for the partnership and for the University.

Section IV. Contract Terms.

Below are contract terms and conditions that are expected to be incorporated into the final contract. There are certain sections that are non-negotiable including, but not limited to, 1) the insurance coverages and limits; 2) Governing law other than the State of West Virginia, 3) clauses requiring indemnification and hold harmless, 4) certifications and warranties, and 5) funding.

- 4.1 Contract Term. West Virginia University desires to enter into a contract with the successful Offeror effective 7/1/2013. The length of such contract(s) shall be proposed by the Offeror and accepted or further negotiated at the sole discretion of West Virginia University
- 4.2 Compliance with Laws. Offerors shall comply with all applicable laws, statutes, regulations, rules or enactments of governmental agencies having jurisdiction over the Contract and its performance. Offeror shall obtain at its own expense all necessary licenses and permissions necessary for the performance of the work.
- 4.3 Contract Termination. West Virginia University may cancel the contract(s) upon thirty (30) days written notice, with or without cause. The Offeror(s) may cancel the contract(s) for cause only which terms of cause shall be negotiated into the final contract between the parties.
- 4.4 Independent Contractor. The University's relationship to the Contractor shall be that of an Independent Contractor. The Contractor shall not be considered an agent or employee of the University for any purpose. Contractor shall independently perform all services specified in this Contract except as provided herein. Contractor shall have sole

control over the manner and means of providing the work and services performed under this Contract including the selection and use of any subcontractors. The Contractor may not hire University employees to perform any portion of the work or services provided for herein, including clerical, secretarial and similar incidental services, except with the prior written approval of the University.

- 4.5 Use of Name, Logos. Neither party shall use the name of the other in any written material, including but not limited to brochures, letters, circulars, or advertisement for commercial purposes without the prior written consent of the other. Offeror may be required to acknowledge sponsorship of work performed under this Contract. Offeror must adhere to all guidelines provided for the use of the official University designation, logo and HTML and Graphic/Logo usage, or any other intellectual property usage as approved and managed by University's Office of Trademark and Licensing.
- 4.6 Force Majeure. Neither party shall be liable for damages for any delay or default in performing its respective obligations under this Contract if such delay or default is caused by conditions beyond its control. Such conditions include but are not limited to acts of God, government restrictions, strikes, fires, floods, or work stoppages, or acts or failures to act of third parties. So long as any such cause for delay or default continues, the party affected by the conditions beyond its control shall keep the other party at all times fully informed concerning the matters causing the delay or default and the prospects of their ending.
- 4.7 Applicable Law. Any contract resulting from this RFP shall be governed and interpreted under the laws of the State of West Virginia.
- 4.8 Contract Assignment: A contract or any part thereof entered into as a result of this RFP shall not be assigned, sublet, or transferred directly or indirectly without the prior written consent of West Virginia University.
- 4.9 Termination for Lack of Funding. In the event that the Contract resulting from this RFP is funded from State of West Virginia appropriated funds, the Offeror understands that this Contract is subject to termination and cancellation without any penalty, accelerated payment, or other recoupment mechanism as provided herein in any fiscal year for which the West Virginia Legislature fails to make an appropriation to make payments under the terms of this Contract. In the event of termination for lack of appropriation, the Offeror shall be paid for services performed under this Contract up to the effective date of termination and notice of such termination will be submitted to the Offeror in writing not less than sixty (60) days prior to the effective date.
- 4.10 Family Educational Rights and Privacy Act ("FERPA"). If information about University students will be disclosed by the University under this Contract, FERPA applies. Information contained in education records provided by the University shall not be disclosed to any other party without the prior written consent of the subject student. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. In the event that the Offeror violates this provision of the Contract, University has the right to immediately terminate. Therefore, the Offeror shall not be permitted to access personally identifiable student information from the University for a period of five (5) years. (See 20 USC §1232g)
- 4.11 Insurance Requirements. Offeror is thereafter, required to provide proof of certain types of insurance for the entire term of this Contract and any renewals thereof. Offeror shall furnish proof of insurance and renewals to the University. Subcontractors must comply with the same insurance requirements through the primary Offeror. Failure to comply with the applicable insurance requirements may be regarded as a material breach of this Contract. Please refer to Appendix II for the required insurance policies and limits.

A claims-made policy that is replaced or not renewed must have an extended reporting period of not less than two (2) years. When policies are renewed or replaced, any retroactive date must coincide with or precede commencement of services by the Offeror or Subcontractor under this Contract.

The insurance secured by the Offeror hereunder shall name the West Virginia University Board of Governors on behalf of West Virginia University as an additional insured as respects General and Broadcasters Liability, shall be written by insurers acceptable to the University and insurers current A.M. Best ratings shall not be lower than B+VI, and shall not be cancelable until at least thirty (30) days after written notice is given to the University.

- 4.12 Indemnification and Hold Harmless. The Offeror shall indemnify and hold harmless the University and University's agents, servants and employees against all loss, damage and expense which they may sustain or become liable for on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under the Contract by the Offeror or his Subcontractors or due to or arising in any manner from the wrongful act or negligence of the Offeror or his Subcontractors or any employee of any of them.
- 4.13 Waiver. A waiver by either party of any breach of the Contract shall not be held to be a waiver of any other breach. The failure of either party to enforce any provision shall in no way be construed to be a waiver of such provisions or to affect the validity of this Contract or any part hereof, or the right of either party thereafter to enforce each and every provision in accordance with the terms
- 4.14 Amendment. This Contract shall not be amended, modified, altered or changed except by mutual agreement of the parties confirmed in writing. Contractor waives any and all claims for adjustment in regard to any services performed without prior receipt of an appropriate written amendment.
- 4.15 Severability. In the event any provision of this Contract is held invalid, illegal or unenforceable by a court of competent jurisdiction, said provision shall be stricken to the extent applicable and the remainder of the Contract shall not be affected thereby.
- 4.16 Integration Clause; Order of Precedence. This Contract, its attachments and incorporated references constitute the entire agreement between the parties and supersede all prior communications and writings with respect to the content of said Contract. In case of any conflict between this Contract and any attachments or incorporated references, the order of precedence shall be any applicable statutory reference, then this Contract, then attachments and other incorporated references. No conflicting terms in Offeror's proposal, work order, purchase order forms or other documents shall apply unless specifically accepted in writing by the University.
- 4.17 Signature. This Contract shall not be binding until signed by authorized representatives of both parties. The person signing this Contract represents and warrants that they have authority to bind the respective parties.
- 4.18 Certifications. Offeror must certify **at time of contract** the following:
- 4.18.1 That it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Contract pursuant to W. Va. Code § 5A-3-10a.
- 4.18.2 That to its knowledge, no officer or employee of the State of West Virginia or University has participated in any decision relating to this Contract which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W. Va. Code § 6B-1-2, et seq. (2010).
- 4.19 Securitization of Funds Payable to University. Offeror may be required to secure, by letter of guarantee, deposit, or otherwise agreed method all monies payable to University relating to the services provided pursuant to this RFP. Such agreement shall become part of any final Contract as mutually negotiated between the parties.

Section V. Response Evaluation.

All Proposals will be evaluated by an evaluation committee. Based on this evaluation the University will determine the award of the Contract, if any.

The University may award the Contract to the responsible Offeror whose Proposal is determined to be the most advantageous to the University, taking into consideration financial proposal and the evaluation factors set forth in this RFP.

5.1 Responsiveness Review. The University will review all Proposals for timeliness, format, and completeness. The University in its sole discretion may reject any late, incomplete, or incorrectly formatted Proposal. The University may, waive or permit an Offeror to correct a minor defect. If a late Proposal is rejected, the University shall not open it or evaluate it for format or completeness. The University will forward all timely, complete, and properly formatted Proposals to an evaluation committee.

5.2 Committee Review. The evaluation committee will evaluate each Proposal that passes the Responsiveness Review. The evaluation will be according to the criteria contained in this part of the RFP. The committee may also have the Proposals, or portions of them, reviewed by independent third parties or other personnel with relevant technical or professional experience. The committee may also seek the review of end users of the Project or the advice of other committees that have subject matter expertise or an interest in the outcome of this RFP process.

At any time during the committee evaluation phase, the committee may ask an Offeror to correct, revise, or clarify any portions of its Proposal.

5.3 Proposal Evaluation Criteria. The following evaluation factors will be used in determining the best-qualified Proposal:

5.3.1 Expertise and Experience;

5.3.2 Strategy, Operational Plan and Staffing Plan;

5.3.3 Financial Offer; and

5.3.4 Adequacy of Financial Resources to Support Plan and Financial Commitments.

5.4 Clarifications. During the evaluation process, the evaluation committee may request clarifications from any Offeror. The University reserves the right to allow any Offeror a reasonable opportunity to cure a minor irregularity or technical deficiency in a Proposal, provided that the irregularity or deficiency does not give the Offeror an unfair competitive advantage. Such a clarification shall not be considered an amendment to a Proposal.

5.5 Interviews, Demonstrations, and Presentations. Appearance before the evaluation committee: The evaluation committee may require Offerors to interview with the committee, make presentations about their Proposal, and/or demonstrate their products or services. Such presentations, demonstrations, and interviews will provide an Offeror the opportunity to clarify its Proposal and to ensure a mutual understanding of the Proposal's content. The presentations, demonstrations, and interviews will be scheduled at the convenience and discretion of the evaluation committee. The evaluation committee may record any presentations, demonstrations, and interviews.

5.6 Notice of Award; Negotiations. Upon completion of the evaluation, the University will issue a Notice of Intent to Award to the selected Offeror. The Notice of Intent to Award will state that award and execution of the Contract is based upon the expectation that the highest scoring Offeror will comply with all conditions for Contract execution within 90 days of the date of the Notice of Award.

Noncompliance with such conditions may be cause for the University to cancel the Notice of Intent to Award and award the Contract to the next highest scoring Offeror, or resubmit the Contract for Proposals, at the University's sole discretion.

Offeror(s) shall negotiate in good faith. Offeror(s) may negotiate only the specific aspects of the RFP that the University, in its sole discretion, selects for negotiation. Offeror(s) may negotiate modifications to the scope of services contemplated by this RFP. Offeror(s) may not attempt to gain access to the contents of another Offeror's Proposal before the award of the Contract or cancellation of this RFP. Any Offeror that attempts to gain access to another's Proposal before Contract award or cancellation of this RFP may be disqualified.

The University, in its sole discretion, may extend the time for submittals that are conditions precedent for Contract execution for good cause shown. No extension shall serve as a waiver of the conditions for Contract execution.

Appendix 1

Athletic Sponsorship and Media Assets

1. Marketing Rights

- Use of official marks and endorsements
- Retail activation programs
- Rights to Coach's Endorsements (Subject to current and future employment agreements.)

2. On Premise Signage

- Permanent and LED
- TV viewable
- In-bowl/arena
- Video board
- Concourse

3. Event Marketing Rights

- Game day sponsorships
- Product distribution
- Promotions
- Sport entitlements
- Out of market events

4. Tickets, Hospitality, and Unique Experiences

- Season and single game tickets and parking
- Premium seating opportunities (club seats, suite access, etc.)
- Pre-event hospitality tents
- Behind the scenes access at athletic events

5. Video Content Rights (subject to current and future conference and third-party agreements)

- Live and tape-delayed events
- Ancillary programming (highlight shows, coaches' shows, etc.)

- Affiliate rights

6. **Audio Content Rights**

- Live and archived events
- Ancillary programming (pregame shows, postgame shows, coaches' shows, etc.)
- Affiliate rights

7. **Print Rights**

- Game day publications
- Promotional materials

8. **Digital Rights (subject to terms of current and future conference and third party agreements)**

- Web site advertising rights
- Streaming rights
- Additional online rights (subscriptions, store, auctions, etc.)

APPENDIX II

LIABILITY INSURANCE

If required under the terms of award or if work on any University property is to be performed by the Vendor/Contractor, the Vendor/Contractor receiving the award shall cause a Certificate of Insurance to be issued showing the following required coverage in no less than the minimum coverage limits listed below. The insurance companies providing coverage must have an A- or better rating in the current edition of Best's Key Rating Guide. The Vendor/Contractor must agree to maintain such insurance for the duration of the project or the term for which services will be rendered.

Assigned subcontractors must comply with the same insurance coverage requirements as the Vendor/Contractor. Subcontractors shall submit the required Certificate of Insurance through the primary Vendor/Contractor.

With respect to the required Commercial General Liability insurance, the West Virginia University Board of Governors shall be named as an additional insured. In order to meet this requirement, the following wording should appear on any Certificate of Insurance provided: "The West Virginia University Board of Governors is an additional insured for any liability incurred by West Virginia University arising from the activities of the Vendor/Contractor and/or Subcontractor performing work on behalf of the Vendor/Contractor."

Selected Firm agrees to obtain and maintain, throughout the term of this Agreement, and shall provide West Virginia University with satisfactory evidence of, the following insurance coverage:

- A. Worker's compensation (statutory) and employer's liability in the amount of one million dollars (\$1,000,000);
- B. General liability insurance in an amount equal to one million dollars (\$1,000,000) per occurrence;
- C. Excess liability insurance in an amount equal to five million dollars (\$5,000,000) aggregate;
Automobile liability insurance, including non-owned and hired auto, in an amount equal to one million dollars (\$1,000,000) combined single limits of liability; and
- D. Broadcaster's liability insurance in an amount equal to two million dollars (\$2,000,000) per occurrence.

The insurance secured by the Selected Firm hereunder shall name the West Virginia University Board of Governors as an additional insured as respects General and Broadcasters Liability, shall be written by insurers acceptable to the University and insurer's current A.M. Best ratings shall not be lower than A-, and shall not be canceled until at least thirty (30) days after written notice is given to West Virginia University.

A claims-made policy that is replaced or not renewed must have an extended reporting period of not less than two (2) years. When policies are renewed or replaced, any retroactive date must coincide with or precede commencement of services by the Contractor or Subcontractor under this Contract.

The insurance coverage and limits listed above are non-negotiable.

The Vendor/Contractor shall furnish West Virginia University, Procurement, Contracting, and Payment Department, One Waterfront Place 3rd Floor, PO Box 6024, Morgantown, WV 26506 any original Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this agreement, and any renewal Certificate(s) of Insurance if coverage has an expiration or renewal date occurring during the term of this agreement. The receipt of any certificate does not constitute agreement by the University that insurance requirements have been met. Failure of the University to obtain certificates or other insurance evidence from the vendor/contractor shall not be deemed a waiver by the University.

Failure to comply with insurance requirements may be regarded as a breach of contract terms.

Any Contract Number that is the basis for issuance of the Certificate must be indicated on the Certificate of Insurance provided to the University.

Appendix III
West Virginia University
Mandatory Prequalification Statement
Athletic Sponsorship and Media Rights Proposal

1. Purpose.

The purpose of this Prequalification submission is to qualify firms for continuation through the RFP process. The University is identifying potential, experienced firms to outsource its Sponsorship and Multi-Media Rights. If you are the selected Firm, you shall be expected to create and develop your own distribution plan for broadcast, distribution, and promotion of the radio and television programming, corporate sponsorships, signage, Internet advertising, game program sales, and related promotions and broadcasts currently being provided by and or coordinated with WVU. The selected Firm shall be responsible for all aspects of this service. The Firms are to complete this Pre-Qualification form in its entirety and submit the response no later than 4:00 on 7/2/2012.

IMPORTANT: IF MULTIPLE COMPANIES/FIRMS ARE PARTNERING TO PROVIDE THE SERVICES PURSUANT TO THE RFP, ALL ENTITIES MUST INDIVIDUALLY FILL OUT A PREQUALIFICATION STATEMENT AND SUBMIT IT JOINTLY TO THE UNIVERSITY.

2. Qualification Evaluation.

Some items in this Prequalification Statement are required for information purposes only. Other items will be evaluated and rated for Firm qualification. Firms with the highest evaluations will be deemed most qualified to continue through the RFP process, at the sole and absolute discretion of West Virginia University.

3. Firm Information:

Legal Name: Enter
If applicable, DBA: Enter
Address: Enter Address
Enter Address
City, State ZipCode

Business Phone: Enter Phone
Facsimile: Enter Fax

Please complete if the mailing address is different from above address:

Address: Enter Address
Enter Address
City, State ZipCode

Contact Person: Enter
Contact Phone: Enter Phone
Contact Email: Enter Email

4. Insurance.

By signature and submission of this Prequalification Statement, Firm does hereby attest that it is insured at least in limits equal to the University's minimum requirements as identified in the RFP. The Firm must designate the West Virginia University Board of Governors as an additional insured, as specified in the RFP.

5. Experience and Reference for Qualification.

Provide three (3) references below in which your Firm has developed a comprehensive, nationally marketed, Media and Sponsorship rights program within the past five (5) years at a level of similar magnitude to the University.

Reference #1	
Name of college, university, professional team, or other comparable entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>
Information	
Licensed Rights Involved:	
Production and Broadcast of Radio:	Yes <input type="checkbox"/> ; No <input type="checkbox"/> If yes, length of time in years: <u>Enter</u>
Production and Broadcast of Television Programming:	Yes <input type="checkbox"/> ; No <input type="checkbox"/> If yes, length of time in years: <u>Enter</u>
Signage/Corporate Sponsorships:	Yes <input type="checkbox"/> ; No <input type="checkbox"/> If yes, length of time in years: <u>Enter</u>
Internet Advertising:	Yes <input type="checkbox"/> ; No <input type="checkbox"/> If yes, length of time in years: <u>Enter</u>
Game Day Programs:	Yes <input type="checkbox"/> ; No <input type="checkbox"/> If yes, length of time in years: <u>Enter</u>

Reference #2	
Name of college, university, professional team, or other comparable entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>
Information	
Licensed Rights Involved:	
Production and Broadcast of Radio:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>

	If yes, length of time in years: <u>Enter</u>
Production and Broadcast of Television Programming:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Signage/Corporate Sponsorships:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Internet Advertising:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Game Day Programs:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>

Reference #3	
Name of college, university, professional team, or other comparable entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>
Information	
Licensed Rights Involved:	
Production and Broadcast of Radio:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Production and Broadcast of Television Programming:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Signage/Corporate Sponsorships:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Internet Advertising:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>
Game Day Programs:	Yes <input type="checkbox"/> ; No <input type="checkbox"/>
	If yes, length of time in years: <u>Enter</u>

6. Experience and References for Qualification.

Does your Firm have experience in selling sponsorships in local and/or national markets?
Yes ☐ / No ☐

If yes, fill out the requested information below:

Years of experience selling Corporate Sponsorships	
Years of Experience in:	
Morgantown, WV	If yes, length of time in years: <u>Enter</u>
State of West Virginia	If yes, length of time in years: <u>Enter</u>
National	If yes, length of time in years: <u>Enter</u>

Identify the names of corporations that you have sold corporate sponsorships to in the last five (5) years. (Add additional pages if necessary, top three must provide reference for University to contact):

Reference #1	
Name of college/corporation/other entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>

Reference #2	
Name of college /corporation/other comparable entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>

Reference #3	
Name of college /corporation/other comparable entity:	<u>Enter</u>
Address:	Address Address City, State ZipCode
Name of direct contact for reference:	<u>Enter</u>
Contact Telephone Number:	<u>Enter</u>
Contact Email Address:	<u>Enter</u>

7. Personnel.

Provide, by attachment, the names and vitae of all upper level management and key individuals who will be directly assigned to the University to render the services as required by the RFP. Such information should provide an overview of each individuals experience and other qualifications in all key areas of involvement and responsibilities. The Firm hereby agrees and understands that no material change in personnel shall be made if selected to provide the services as contemplated by the RFP.

All Firms must provide the name and vitae of the specific individual or individuals from the Firm that will be responsible and accountable for the start-up of the partnership, to include identifying and hiring the local leadership and staff. Please note, the University is not requesting who will be hired or identified as the individual staff members or otherwise, only who from the Firm will be charged with identifying and hiring such individuals.

8. Financial Stability.

Corporate financial statements for three (3) years and the un-audited year to date financial statement for the most recent month end for all entities comprising the Offeror's team are required as a part of this Pre-Qualification Statement. The financial statements should include evidence of financial capacity and resources to provide the services as contemplated by the RFP.

9. Signature.

By signing this Prequalification Statement, the Proposer signifies agreement with and acceptance of all the terms, conditions and specifications shown in this RFP. The person signing below represents and warrants that he/she has authority to bind his/her company. Please complete all the information requested below:

Firm Name: Enter

Address: Enter Address
Enter Address
City, State ZipCode

Telephone Phone: Enter Phone

Signature: _____

Date: _____

Appendix IV RECIPROCAL NONDISCLOSURE AGREEMENT

This Reciprocal Nondisclosure Agreement ("Agreement") is between the West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the state of West Virginia ("UNIVERSITY"), and Enter Offeror, with principal offices at Enter Address ("OFFEROR").

Each party anticipates disclosing to the other party certain information for the purpose of responding to Request for Proposal Number Enter Proposal Number and proposing a solution for potentially offering athletic sponsorship and media rights services to the University. ("Purpose").

The parties agree to maintain the secrecy of the disclosed information as follows:

1. Confidential Information. "Confidential Information" means all proprietary, privileged or confidential information in any form furnished by the disclosing party to the receiving party after the effective date of this Agreement and pursuant to the Purpose that the disclosing party intends to remain secret from third parties on the grounds that its disclosure would either cause the disclosing party competitive harm or waive a privilege granted by law. In order to enforce this provision, the disclosing party must mark tangible information "confidential" at the time of disclosure and, within thirty (30) days of an oral disclosure, provide the receiving party a written summary that sufficiently describes the information that receiving party should protect as Confidential Information.
2. Exclusions. Confidential Information does not include information that: (a) is, or, after disclosure under this Agreement becomes, publicly available through no fault of receiving party; (b) was independently developed by receiving party without access to Confidential Information; (c) was furnished by a third party who, to receiving party's knowledge, had no or known confidentiality obligation to disclosing party; (d) was in receiving party's possession on a non-confidential basis prior to receipt from disclosing party; or (e) is explicitly approved in writing for release by disclosing party.
3. Nondisclosure Obligation. During the term, and for three (3) years from the expiration or earlier termination of this Agreement, receiving party will not disclose or otherwise make available to any third parties the Confidential Information, except as otherwise expressly permitted under this Agreement. The receiving party may provide Confidential Information to its employees and agents (collectively "Representatives") who have a need to know the Confidential Information for the Purpose. The receiving party will be responsible for any unauthorized use, reproduction, or disclosure of Confidential Information by its Representatives. The receiving party will use the disclosing party's Confidential Information solely for the Purpose, and for no other purpose, and will not decompile, disassemble, or reverse engineer any products (including computer programs), prototypes or models received as Confidential Information. The receiving party will exercise the same degree of care to safeguard the Confidential Information as it uses to safeguard its own confidential, proprietary and privileged information, but in no event less than a reasonable degree of care.
4. Disclosures Required by Law. If receiving party receives a demand to disclose Confidential Information under authority of law, including but not limited to an order of a court of competent jurisdiction or administrative body, a subpoena, or a valid public records request, to the extent legally permissible and as soon as practicable, receiving party will notify the disclosing party of the demand and will disclose only such Confidential Information as the demand requires which is not otherwise exempt under such laws. In no event will receiving party be in breach of this Agreement for its good faith compliance with law.
5. Proprietary Legends. The receiving party will not remove any copyright or other proprietary rights notice attached to or included in any Confidential Information and will reproduce all such notices on any duplicates of the Confidential Information.
6. Return of Confidential Information. Upon disclosing party's request, and to the extent reasonably possible, receiving party will destroy or return all Confidential Information existing in tangible form.

7. Proprietary Rights. By furnishing Confidential Information, disclosing party does not convey or transfer to receiving party any title to, or interest in, the Confidential Information.

8. No Warranties. Confidential Information is furnished "AS IS" and without any warranty, express or implied, concerning its accuracy, completeness, or performance. Disclosing party expressly disclaims all warranties of use, fitness for particular purpose, merchantability, and non-infringement of third party rights.

9. Legal and Equitable Relief. In the event of any actual or threatened breaches of this Agreement by a party or its Representatives, the aggrieved party may seek all legal and equitable remedies afforded it by law.

10. Loss, Theft or Unauthorized Disclosure. Promptly upon discovery, receiving party will notify disclosing party of any loss, theft, or unauthorized disclosure or use of Confidential Information and will cooperate in good faith to mitigate any damage to disclosing party.

11. Term and Termination. This Agreement is effective on the date the last party signed this Agreement below and shall be in effect for three (3) years unless earlier terminated as provided in this Article. Either party may terminate this Agreement upon thirty (30) days' advance written notice to the other party. All obligations of confidentiality and non-use shall survive termination or expiration for the period set forth in Article 3.

12. General Provisions

12.1. Merger. This Agreement contains the entire understanding of the parties with respect to the subject matter and supersedes all prior agreements or understandings, whether written or oral.

12.2. Amendments. No modification of this Agreement shall be effective unless made by a written instrument signed by both parties.

12.3. No Waiver. A party's failure to enforce any provision of this Agreement shall not operate as that party's waiver of the particular provision or this Agreement as a whole.

12.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of West Virginia without reference to its conflict of laws principles. Nothing in this Agreement is intended to constitute a waiver of the University's sovereign immunity under state or federal law.

12.5 Notices. A party will deliver all notices contemplated under this Agreement to the other party as prescribed below. All notices must be in writing and delivered by: postage prepaid, certified mail, return-receipt requested; overnight prepaid commercial delivery; fax; or other commercial methods with delivery verification. Notice is effective upon receipt. A party shall notify the other party of any change in the contact information.

OFFEROR:

Mailing Address:

Enter Address

Enter Address

Enter City,

Enter State

Enter ZipCode

UNIVERSITY:

West Virginia University

Attn: Tim Bostonia

One Waterfront Place, 3rd Floor

PO Box 6024

Morgantown, WV 26506

12.6. Counterparts. The parties may sign this Agreement in one or more counterparts, each of which constitutes an original and all of which together constitute the Agreement. Facsimile or other electronic signatures constitute original signatures for all purposes.

12.8. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

12.9. Ambiguities. Any rule of construction that would resolve ambiguities against the drafting party shall not apply in interpreting this Agreement. Instead, the language in this Agreement shall be accorded its fair meaning and not strictly for or against any party.

12.10. No Third-Party Beneficiaries. The parties do not intend for this Agreement to benefit any third party.

12.11. Assignment. No party may assign or delegate, in whole or part, the rights or obligations created by this Agreement without the prior written consent of the other party. Each party and the individuals signing below on its behalf certify that this Agreement is intended to be a binding contract and that the signatories are authorized to act in the capacities indicated.

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS ON BEHALF OF WEST VIRGINIA
UNIVERSITY

OFFEROR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



Procurement, Contracting and Payment Services

West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights

ADDENDUM # 1

June 22, 2012

WVU expresses its sincere thanks to everyone who participated in the Pre-Proposal Conference call. The information provided in the addendum is being sent via e-mail and will be posted at <http://wvubids.finance.wvu.edu>

Pre-Proposal Conference Call Participants – Please correct any errors or omissions via return e-mail.

Name	Company Name
Doug Paschal	CBS Collegiate Sports Properties
Bob Snider	Comcast / NBC
Brittany Heath	Comcast / NBC
Eric Smallwood	Comcast / NBC
Jessica Donahue	Comcast / NBC
Ryan Furey	Comcast / NBC
Chris Lencheski	Comcast / NBC & Front Row Marketing
Janeen Lalik	IMG
Adam Rock	IMG
Tom Stevens	Learfield Sports
George Manias	Legends Sales & Marketing
Brett Moody	Nelligan Sports Marketing
Mark Donley	Nelligan Sports Marketing
Mike Palisi	Nelligan Sports Marketing
Ryan Bosma	Nelligan Sports Marketing
John Cronin	The Hub Companies
Bray Cary	West Virginia Media Holdings
Larry Cottrell	West Virginia Media Holdings
Dale B. Miller	West Virginia Radio Corporation
Bary Loudis	XOS Digital
Chris Kesicke	XOS Digital

Questions were submitted regarding the referenced RFP; answers to those questions are listed below. Questions not related to procedure or the RFP process have been omitted at this time:

- 1) Appendix III (6): Is WVU looking for sponsor/advertiser clients? If so, does WVU want ALL clients we've sold to (the RFP suggests adding additional pages)?

Yes, please provide a complete list of any corporate clients, using additional pages if necessary.



Procurement, Contracting and Payment Services

- 2) Appendix III (8): Due to FOIA concerns, we are hesitant to provide such confidential information. We can provide written references from our banking and auditing partners. Will that be sufficient?

The financial and other information requested must be submitted by the Proposers. WVU, as an institution of higher education and an agency of the state of West Virginia, is subject to W. Va. Code §29B-1-1 et. seq. "Freedom of Information", under which certain exemptions are stated. During the selection process, WVU will hold all information confidential and such information will not be released; however, upon selection and execution of a contract or otherwise, certain information will be subject to FOIA. Trade secrets or proprietary information submitted by a Proposer shall not be subject to FOIA. However, Proposers must identify such proprietary or trade secret material by a distinct method such as highlighting or underlining the specific information and sections which are to be protected and identified as "CONFIDENTIAL".

- 3) Please explain the RFP process after the August 31 deadline. Will there be on-campus presentations? Will there be Best and Final Offers?

Presentations and Best and Final Offers are at WVU's discretion. Offerors will be notified and given appropriate preparation time if they are required.

- 4) Can we go on campus and walk facilities more often than just what is mandatory, and is there any protocol we should adhere to?

WVU intends to fully facilitate campus visits by proposers to the fullest extent possible upon completion of the Pre-Qualification stage of this RFP. More information and scheduling opportunities will be issued by Addenda upon completion of Stage I.

- 5) Should we outline in writing any and all exceptions/issues/concerns we have regarding the Pre-Qualification Statements?

Please provide any exceptions/issues/concerns immediately in writing to WVU regarding the Pre-Qualification Statement. Any concerns will be appropriately addressed by WVU, if it deems necessary, in order to facilitate full and complete participation in this RFP. Any results of such review shall be issued in writing and, if necessary, appropriate revisions to the RFP will be provided to all Proposers pursuant to the RFP guidelines.

- 6) Should an Offeror have an exception with the terms outlined in Appendix IV, Reciprocal Non-Disclosure Agreement, can the Offeror address the concern and include alternate language to rectify the concern in the Pre-Qualification document or RFP response?

Please provide any requests immediately in writing to WVU regarding the Reciprocal Non-Disclosure and Confidentiality Agreement. Any concerns will be appropriately addressed by WVU, if it deems necessary, in order to facilitate full and complete participation in this RFP. Any results of such review shall be issued in writing and, if necessary, appropriate revisions to the RFP will be provided to all Proposers pursuant to the RFP guidelines.



Procurement, Contracting and Payment Services

- 7) Per Section 5.3, Proposal Evaluation Criteria of the RFP, will the University use a weighted/point system for each criteria listed (5.3.1 – 5.3.4) when determining the best-qualified proposals?

WVU employs a weighted system to evaluate and select the successful proposer based upon the criteria contained in the RFP; however, WVU does not release pre-determined evaluation criteria weights until after the selection process has been completed.

- 8) Will follow-ups be sent by email?

Follow-ups will be sent to those who are registered. If you are not currently on the list, please confirm with Tim Bostonia at mtbostonia@mail.wvu.edu or register at <http://wvubids.finance.wvu.edu>

- 9) Regarding Section 4 – Do we provide a Certificate of Insurance when submitting Phase I or just sign and submit?

The insurance certificate is not required in Phase I; only a signature is required at this time.

RFP AMENDMENT

Page 13, Section III, Item 6 is hereby modified as follows:

6. Detailed Revenue Proforma for the proposed term.

Page 13, Section IV, Item 4.3 is hereby deleted in its entirety.

END OF ADDENDUM 1

A handwritten signature in black ink that reads 'Tim Bostonia'.

Digitally signed by Tim Bostonia
DN: cn=Tim Bostonia, o=West Virginia University,
ou=Procurement, Contracting, and Payment
Services, email=mtbostonia@mail.wvu.edu, c=US
Date: 2012.06.22 13:40:36 -0400

West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights

ADDENDUM # 2

June 26, 2012

RFP AMENDMENTS

- 1) The section labeled "LIABILITY" on Page 2 of the RFP is hereby amended to read as follows:

"Offeror agrees to indemnify and save and hold the University, its agents and employees harmless from any and all claims or causes of action arising out of this RFP to the extent caused by reason of the acts or omissions of Offeror or Offerors agents or employees."

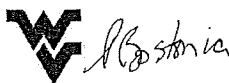
- 2) Appendix III – Item 8 – Financial Stability, is hereby deleted in its entirety and replaced with the following:

8. Financial Stability.

Financial responsibility determination will be made prior to allowing firms to move to Stage II of this RFP. In order to facilitate the responsibility determination, the University will request and evaluate Dun and Bradstreet (D&B) business analysis reports for each prospective proposer. If the financial information available through D&B business analysis reports is not sufficient to complete a satisfactory review of a prospective proposer's financial stability, the University reserves the right to request a prospective proposer to submit, prior to qualification, its comparative/audited financial statements, credit reports, bank credit opinions, auditor opinions, or other information, in its sole and absolute discretion, it deems necessary to satisfy the University of the firms' financial stability to provide the services as contemplated by this RFP.

An updated copy of page 1 -3 of the RFP and the Pre-Qualification Document are attached for submissions due by 4PM on July 2, 2012.

END OF ADDENDUM 2



Digitally signed by Tim Bostonia
DN: cn=Tim Bostonia, o=West Virginia
University, ou=Procurement, Contracting,
and Payment Services,
email=mtbostonia@mail.wvu.edu, c=US
Date: 2012.06.26 15:39:44 -0400

West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights

ADDENDUM # 3

July 26, 2012

NOTICE OF DATE CHANGE TO PRE-PROPOSAL CONFERENCE AND UNIVERSITY TOUR

West Virginia University hereby notifies all prequalified offerors to the above mentioned athletic sponsorship and media rights request for proposal that due to the volume of questions and to ensure information is provided fully and accurately the tentative implementation timeline relating to the pre-proposal conference scheduled for Tuesday, August 7, 2012 has been rescheduled.

The pre-proposal conference will be held on **Wednesday, August 22, 2012 beginning at 1:00 p.m.** eastern daylight time. The University anticipates having answers to Round 1 questions, to the fullest extent possible, to offerors prior to the pre-proposal conference meeting in order to allow adequate time for review and potential follow-up questions.

The University, following the pre-proposal conference, shall make adequate and fair adjustments to the remaining submissions and processes identified on the "Selection and Tentative Implementation Timeline" found on page 9 of the official request for proposal relating to this project.

The University shall provide all prequalified offerors with information pertaining to the pre-proposal conference including, discounted hotel availability, agenda, registration, and location information as soon as available.

END OF ADDENDUM

Tim Bostonia

Digitally signed by Tim Bostonia
DN: cn=Tim Bostonia, o=West Virginia
University, ou=Purchasing, Contracts &
Payment Services,
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Procurement, Contracting and Payment Services

**West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights**

ADDENDUM # 4

August 10, 2012

- 1) Section III (Proposal Requirements), Item 7 is hereby deleted in its entirety and replaced with the following:

7. Detailed list of all known and anticipated expenditures/liabilities associated with the production, sale and fulfillment of the assets that support the Revenue Proforma, including identification of each as an Offeror or University responsibility. The requirement to provide actual line item amounts only applies to financial offers that take into account expenses for determining the University's share of revenue or in any way impacts the value offering for the University. All proposals, however, must still clearly identify each liability (for example: talent travel or signage production) and which party shall be responsible for that cost.
- 2) The initial answers to Round 1 Questions will be provided via e-mail on or about August 15, 2012. Additional answers and supporting detail will be provided at the Pre-Proposal Conference on August 22, 2012.
- 3) The due date for RFP responses will be extended a minimum of two weeks. A revised timeline, including opportunity to submit Round 2 Questions will be published after the Pre-Proposal Conference scheduled on August 22, 2012.



Digitally signed by Tim Bostonia
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END OF ADDENDUM # 4



Procurement, Contracting and Payment Services

West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights

ADDENDUM # 5

August 31, 2012

- 1) The schedule for the referenced RFP is replaced with the following. Responses are now due no later than 4:00 PM Eastern Time on Tuesday, October 2, 2012.

Distribution of Answers to Final Questions	9/11/2012	
Deadline for RFP proposal Submission (Response Due Date):	10/2/2012	4:00 PM EST
Finish Evaluations:	10/19/2012	
Presentations (If required) Two week window starting:	10/22/2012	
Complete Selection Process:	11/16/2012	
Approximate deadline for executing Contract:	1/11/2013	

Questions for this RFP are now closed.

END OF ADDENDUM # 5

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Procurement, Contracting and Payment Services

West Virginia University - Request for Proposals # 90002728X
Athletics Sponsorship and Media Rights

ADDENDUM # 6

September 11, 2012

TO: ALL PRE-QUALIFIED OFFERORS

The information contained in this Addendum is provided to all pre-qualified Offerors only, and is subject to the terms and conditions of the Reciprocal Nondisclosure Agreement executed by the University and your firm. Except as provided for in the referenced RFP, the Reciprocal Nondisclosure Agreement, or by law, all information is identified as "Confidential", and may not be disclosed to any third party.

- I. Attached and made a part hereto is an updated "Schedule M" and the appendices to requested items.
- II. The following section contains the Edited Transcript, including Questions and Answers from the Pre-Proposal Conference on September 5, 2012:

Welcome and Introductions – Brief History – Oliver Luck

Big 12 Video was shown

Questions and Answers:

No sponsorship agreement is tied to a Foundation or private gift. However, consideration is given to the timely status of a solicitation of a major gift by the university.

With regard to radio network growth, WVU seeks – strong clearances – numerous FM stations – secure Pittsburgh and explore Washington, DC market – satellite radio is important.

Ticket prices and locations are addressed in an updated exhibit in the binder provided at the end of the meeting.

WVU does not have an Official Photo Store at this time.

WVU does not have a DVD Store at this time.

Auctions have not been an option due to state regulation on the disposition of state property.

Email newsletters are sent to a combination of season ticket holders, donors and individual signups.

Social media is a role of communications and marketing staff – in some instances the head coaches – marketing staff member oversees strategy. There is no third-party presence.

The Total number of streams was 81 audio and 56 video for the 2011-12 season.



Procurement, Contracting and Payment Services

WVU does not publish a yearbook. There is an Athletic Newspaper that is not affiliated with university.

Delay TV for football has been done in past. With all games being broadcast live, low ratings and advertising interest caused WVU to drop delayed broadcasts.

WVU does not currently have an app specific to athletics. Web is available on mobile and tablet.

Paciolan is WVU's ticket provider. Tickets are scanned at the gates.

Please submit all final questions by close of business on Wednesday, August 29.

There was discussion regarding "Base" vs. "Alternate" proposals:

Naming Rights, certain aspects of Baseball, and Off Athletic Property should be submitted as Alternate Proposals.

All other rights, such as Baseball radio/television, Baseball game promotions and sponsorships, including everything that exists today should be included in the Base Proposal

Mike Parsons reviewed the contents of the binder handout which include:

United Bank Sponsor Elements – Exhibit A

Sponsor Tickets -Exhibit E

Updated Historical and Projections – Exhibit B

Contracts w/sponsors (signed and multi-year)

Baseball Big 12 games will be played in Charleston

WVU has a one-year agreement (current year, 2012-13) to play Big 12 baseball games in Charleston and an option for a second year (next year, 2013-14) if necessary. Other games could be played in Princeton or Beckley at WVU's option. No permanent advertising rights will be available, but WVU has opportunity to sell game sponsorships.

Sponsors are required to purchase all tickets and all parking passes; existing ticket locations will be available to Rightsholder for sponsors. Additional tickets will be made available to Rightsholder to increase opportunities for sponsor growth.

With regard to Exhibit B, "Rights Fees", what feeds into that number?

Rights Fees include fees from radio stations, license agreements for coaches' radio shows and coaches' television shows, rights fees from Root Sports and online royalties.



Procurement, Contracting and Payment Services

Are you providing those contracts?

No

United Bank Sponsorship

The United Bank sponsorship is with Athletics only; there is no Athletic Department credit card

WVU does not want to create two classes of sponsors, and will retain the United Bank sponsorship through 2014; WVU will work with successful Offerer to determine how the sponsorship will be managed until agreement expires and in future years

Campus banking is broad and varied; WVU will be evaluating options in the financial category

United Bank has a right of first refusal under similar terms and conditions; terms and conditions are not explicitly defined.

Media and signage inventory committed to United Bank will come from the overall inventory described within the binder.

Is third tier TV to be included as part of base proposal?

Yes.

When will Big 12 games be released for third tier television?

Big 12 schools will have one football game available for third tier packages. The game should be designated in June.

Big 12 schools will have four to six men's basketball games available for third tier packages.

Please provide a list of radio feeds and stations

A list of radio stations is contained within response to Round 2 Questions.

Most radio affiliate agreements expire following the 2013-14 season; others expire after the 2012-13 season.

Will you provide expense and staff details?

No; currently three individuals are involved in sponsorship sales in addition to other marketing and administrative duties

What criteria/priorities are you looking for going forward; the biggest check?

What is really important is our brand – we want a partner that can help us be on the cutting edge – this is a huge opportunity to grow with us.



Procurement, Contracting and Payment Services

Is there a concern of over-commercialization?

We are not concerned about that at this time.

Is game day radio production done in-house?

Yes

At the end of day, how important is control to you?

Oliver Luck answered – “trust is good – control is better”

We want to be involved in a partnership; with an in-house colleague; a partner we can trust, we want our brand to become more valuable.

The proposal suggested that we get office space in Morgantown. Is there space in the Athletic Department?

WVU wants the partner embedded/housed in-house, i.e., office space in our offices. However, office space within the Athletic Department is not available. It could be available in the future when the College of Physical Activities and Sports Sciences relocates.

Do you have any plans for additional signage or video boards?

WVU has identified the soccer stadium as a location for a video board.

What are Sodexo's rights at the stadium?

Sodexo only has the concession and catering rights for all athletic venues.

Paciolan is primary for ticketing; are you open to a secondary ticket market relationship?

Yes.

III. This section contains Questions and Answers as submitted by close of business on August 29, 2012 as follows:

1. Will WVU provide a copy of the Big 12 Conference contract that specifically spells out all aspects of 3rd tier rights being granted to each school?

The television agreements of the Big 12 Conference will not be available. A summary of the third tier rights available to each Big 12 institution were provided in the response to Round 2 questions.

2. Distribution of 3rd Tier rights is limited, but does this also include coaches TV shows?

Per Big 12 guidelines, clearances for coaches TV shows out of the University's home markets will be considered on a case-by-case basis.



Procurement, Contracting and Payment Services

3. Is there a dollar figure or amount of time/space required for beer sponsors promoting responsible drinking?

Currently, at least one 30-second commercial within each radio broadcast is designated to promote responsible drinking.

4. Will rights holder be held financially responsible for fulfilling the Apparel and Bank contracts, i.e., tickets, parking, etc.?

No.

5. "Currently" is used as a preamble to the Big 12 Conference not imposing any sponsorship rights. Does the University expect this to change within the next few years?

No.

6. Sponsor contracts call out "rotating video panel on scoreboard" what is the duration and expected total number within the rotation sponsors anticipate?

The south videoboard has six sponsors (two visible each time) rotating throughout the game; the sponsorship panel on the videoboard rotates every two minutes. Each sponsor panel is visible approximately 25 times per football game.

7. Sponsor contracts call out "digital rotating video sponsorship units on the stadium ribbon boards" what is the duration and expected total number within the rotation sponsors anticipate?

The stadium ribbon board has 24 sponsors rotating throughout the game; the sponsorship panel on the ribbon board rotates every 45 seconds. Each sponsor panel is visible approximately 16 times per football game.

8. Can multiple sampling/promotional giveaways occur for all athletic events?

Yes.

9. Sideline rights are called out with specific inventory-is this all that can be included?

In addition to uniforms, footwear, apparel and coaches headsets, sideline rights currently include coolers, cups, towels and carts. The University is open to ideas regarding additional sideline inventory.

10. Could you provide us a seating chart for the stadium and arena? Will unsold events require the rights holder to purchase tickets?

Stadium and Coliseum seating diagrams are provided in the Appendix of Addendum 6. The Rightsholder will be required to purchase tickets for football and men's basketball events regardless of status of available tickets. The University would consider other options for tickets for other sports.



Procurement, Contracting and Payment Services

11. Are all parking locations/ passes the same cost and if so what is this cost per space? If not could you breakdown the specific lots where passes are being made available?

All parking locations and season passes are the same price: \$200 for automobiles, \$800 for recreational vehicles.

12. Is there a maximum capacity within the designated hospitality space we must adhere to?

The areas currently designated for hospitality tents will accommodate seven in the main area adjacent to the west gate, four in the upper area behind the TV compound and two on the east side of the stadium; approximately 8-13 tents based upon size. Tent sizes include 20x20, 20x30, 20x40, 30x40, 40x40, 30x60, 40x60, 60x60, 40x80 and 40x100.

13. Creativity seems to be paramount-is the University open to radical changes associated with how things have been done in the past?

WVU encourages firms to be creative in its proposal and will consider any proposed changes that deliver value for the University.

14. Can you shed additional light on the six websites, 17 Facebook pages, 20 twitter accounts and two You Tube channels? Specifically, is MSN selling into these currently?

The University is currently selling sponsorships for its Official Athletic Web Site (WVUsports.com) and sponsored video programming and features which appear on the two YouTube channels. Facebook, twitter and other web sites are used as a promotional vehicle for sponsored events, programs, features or giveaways. See Section 2.01 of the 84 Lumber sponsorship agreement for an example.

15. Can you breakdown the major trade agreements outside pouring rights and apparel?

Trade agreements as listed in Exhibit C include web site hosting, software programming, cellular service, media production, hotel accommodations, food, printing, newspaper advertising space, radio commercial inventory, directory advertising, team equipment and isotonic products. Miscellaneous trade agreements include office equipment, additional hotel accommodations, rental vehicles, golf carts, trailers, storage, parking lot usage, gifts and hospitality.

In addition to the directory advertising provided to the University, Ogden Directories has directly funded co-branded Ogden Directories-WVU t-shirt/rally towel giveaways in the amount of \$100,000, which is accounted for in the trade column of Exhibit C. This commitment was driven by Ogden Directories.

16. Why are there separate contracts for signage & sponsorships for certain marketing partners?

In an effort to manage the University's exposure to unrelated business income tax, separate sponsorship agreements are often executed.

17. Is the exclusivity for Coke only in the soft drink category? Is water or isotonic available?

The University's agreement with Coca Cola includes non-alcoholic beverages, including hot, cold, frozen, carbonated or noncarbonated or naturally or artificially flavored drinks, except non-alcoholic beer, tap water or unbranded juice squeezed fresh on the premises. For the sake of specificity, beverages includes but are not



Procurement, Contracting and Payment Services

limited to carbonated soft drinks, frozen or soft frozen beverages, including frozen lemonade and fruit juice products consumed through a straw or with a spoon, mixers, packaged waters, fruit and/or vegetable juices, fruit and vegetable flavored drinks, ready-to-drink chocolate based drinks, ready-to-drink tea and coffee products and all beverage bases from which these can be prepared (such as syrups, powders, crystals or concentrates).

The Coca Cola agreement includes water. The Coca Cola agreement does not include isotonic.

18. Has the Gatorade agreement (terminated June 30, 2012) been renewed? If so, what are new terms?

WVU's agreement with Gatorade expires on June 30, 2015, per the addendum executed in 2006.

19. Can the athletic department provide three sample in-game promotional game scripts for football, volleyball, men's basketball and women's basketball?

Yes, contained in the Appendix of Addendum 6.

20. How many email blasts or tweets does the Athletic Department send because of sponsor commitments? Is there a current maximum on these types of messages?

Currently there are no sponsor only commitments using the University's Facebook, twitter and email blasts. They are used as a promotional vehicle for sponsored events, programs, features or giveaways.

21. What year were video boards purchased for football? Basketball?

The video boards and ribbon boards at Milan Puskar Stadium and the WVU Coliseum were installed prior to the 2008-09 season.

22. Does Athletic Department own copyright of Mountaineer Sports Network? If so, will the selected provider be allowed full use without an additional royalty?

Yes, the name Mountaineer Sports Network is registered with the Secretary of State. The opportunity to use the name is available and should be considered within any proposal similar to the use of other University marks.

23. What are the terms of the partnership with Team Fan Shop? For example, how long is the agreement term? What are the revenue splits?

The University's agreement with Team Fan Shop expires in 2017; the University has the option to renew for an additional five years. The University receives 25 percent of total net retail sales.

24. Will the Rights Holder get EXCLUSIVE right to sell and manage pre-game hospitality tents in village?

Yes.

25. Has WVU solicited proposals/engaged in discussions to outsource primary ticket solutions?

No.



Procurement, Contracting and Payment Services

26. Will Rightsholder gain access to team charter transportation and team hotels for sponsor/broadcast travel? If so, has a number of available seats been pre-determined?

WVU will provide access to team charters for broadcast travel. The number of seats will be negotiated. Accommodations at team hotels can be provided at the University's rate, based upon availability. Opportunities for access to team charter flights for sponsors will be considered.

27. Have coach's radio shows/tv shows been at a commercial establishment in the last 3 years (i.e., restaurant or bookstore)?

The weekly radio show has been broadcast live from the Regatta Grill in the Waterfront Plaza Hotel. The weekly television show has not originated from a commercial establishment.

28. How much non-broadcast radio commercial time was acquired/traded for last year? Over how many different radio stations?

Currently MSN requires its radio affiliates to provide at least 40 30-second commercials per week to the University between August 1 and May 30 for ticket promotions and branding opportunities. This is in addition to a minimum of 80 30-second spots per week to promote the radio broadcasts. In addition, the University has entered into ticket trade agreements for promotional time with radio stations not affiliated with MSN and not related to multimedia rights inventory.

29. Is the University periodic magazine sold at any athletic venues?

No.

30. What are "football gameday guides," referenced in agreements but not in the Round 2 questions?

Informational guides published by the University to assist fans attending home football games. See updated Exhibit M for details.

31. Is the commercial inventory in the pre and post game broadcasts included in the 27 minutes of existing network commercial inventory referenced for football and basketball games?

Yes. The MSN broadcast begins one hour prior to football games and concludes approximately 30-45 minutes after the game; the MSN broadcast begins 30 minutes prior to men's basketball games and concludes approximately 30 minutes after the game; the MSN broadcast begins 15 minutes prior to women's basketball games and concludes approximately 10-15 minutes after the game.

32. Has the CBS Interactive (OAS) agreement been renewed? For how many years?

No.

33. What is the status of the competition series between WVU and Pitt? Are sponsorship rights available provided the series continues?

There are no current agreements for future competition in football, men's basketball or women's basketball.



Procurement, Contracting and Payment Services

34. Can a copy of your current rate card be provided?

No.

35. Can current campus wide vendor lists be made available to Rightsholder?

Yes, based upon Procurement guidelines, a list can be provided to the selected Rightsholder.

36. Would the university be open to the rights holder hiring university personnel if mutually agreed upon?

The University is placing no requirements or restrictions on the hiring of current staff.

37. Is it fair to assume that banking will be part of this agreement in 2014-15?

No.

38. For the protected categories does the exclusivity also include all media elements? Example: in financial services, can other banks participate in radio and TV broadcasts or hospitality?

The categories are exclusive to all media, signage, promotional and sponsorships. However, a competitor could purchase hospitality as long as the event does not include external signage or promotion. Currently, the protected categories include financial, soft drink, cellular and footwear/apparel.

39. Can you please provide a list of sponsors the basketball coach is currently representing? Also what is his current endorsement rate and if the rights holder negotiates a deal for him does that fee go directly to him. Does he have any other ventures – websites, etc. that may create a conflict with rights included in this RFP?

Commercial endorsements for the head men's basketball coach are managed on a non-exclusive basis by the University; all revenue from endorsement agreements secured by the University is retained by the University. Separate from any University-managed agreement, Coach Huggins currently represents Spaulding. Coach Huggins does not participate in a separate non-University web site. No established rate for Coach Huggins' endorsement opportunities currently exists.

40. Are any of the elements currently included in the United Bank contract open for co-sponsors by a non competing category? Example: schedule cards, coaches caravan, etc.

Yes.

41. Will rights holder have access to bowl and NCAA tournament tickets?

The Rightsholder will have the availability to purchase tickets to bowl games and NCAA tournament games in which WVU participates.

42. At the conclusion of the Chesapeake Energy contract for the Capital Classic will those rights go back to the rights holder?

The title sponsorship rights are retained by the University and proposals should be made accordingly.



Procurement, Contracting and Payment Services

43. How will the Rightsholder be included in current and future digital and social media ventures?

The Rightsholder will be an active participant in all future digital and social media ventures. Offerers should provide as much detail as possible as to how their firm will add value to the process of assisting the University maximize its digital and social media assets.

44. What access will Rightsholder have to experiential elements – on field, half time, in locker room, team travel, etc.?

Subject to further details, the University anticipates that the Rightsholder will have access to multiple unique experience elements to enhance its sponsorship opportunities. The University will consider access to team charter flights. The University does not anticipate the Rightsholder having access to locker rooms.

45. Do current affiliate agreements include season tickets? Will those continue to be provided?

Radio affiliate agreements do not include season tickets. Stations have been provided opportunity to purchase season tickets. The University would continue to provide that opportunity.

46. Will tickets needed for trade contracts be provided by the university?

The Rightsholder will be required to purchase tickets required to execute any sponsorship agreement; however, the University would consider providing tickets at no cost for trade-only agreements pending advance approval.

47. Are sponsors currently tied to text alerts like countdown to kickoff or reminders about fan day?

Yes, if the text alert is used as a promotional vehicle for sponsored events, programs, features or giveaways. Appropriate restrictions apply.

48. Can you provide a sample game day activation schedule that includes normal game day of events for both football and basketball?

Yes, contained in the Appendix of Addendum 6.

49. Does the University desire for the rights holder to provide at a minimum comparable local television exposure for select football and men's basketball games as it currently received through its agreement with Root Sports? If so, does the University compensate Root Sports for the production of the one (1) football broadcast, 4-6 men's basketball broadcasts and the football gameday television show? If so, can you detail what those costs are?

The University must have complete coverage of the State of West Virginia and the Pittsburgh market for its third tier television opportunities. The current model includes shared production liabilities with Root Sports providing the University a rights fee for one football game and three regular season men's basketball games (plus an exhibition game) and commercial inventory in each broadcast for its sponsors. In addition, Root Sports and the University work cooperatively to produce a football gameday show. The University received commercial inventory in the gameday show as well as other WVU/Big 12 Conference programming supplied by Fox.



Procurement, Contracting and Payment Services

50. Does the University desire for the current talent for local television game broadcasts to remain the same with the rights holder? If so, is the University responsible for talent expense through its current agreement with Root Sports? If the University pays talent, can you detail the total cost of the talent salary relating to the above broadcasts?

The play-by-play announcer for the games are provided and paid by Root Sports. The University is responsible for the analyst whose fee ranges between \$400 and \$600 per game.

51. Are there any additional costs involved in these broadcasts that the University is responsible for (on-site producer, travel costs, etc.)? If so, can you detail these additional expenses?

The University provides the below-the-line production personnel for the game telecasts and use of the University's satellite uplink for the live telecasts. Live elements of the football gameday show are produced through the University's video board production facilities. Additional expense details will not be provided, however firms may choose to include these liabilities as a University responsibility in their proposal.

52. Does the University wish to keep the current radio talent team in place for its play-by-play radio broadcasts of varsity sporting events? If so, could the University outline the per-game talent fees that were paid to these individuals during the 2011-12 sports seasons?

The University is very confident with the current broadcast teams for its radio broadcasts. The radio talent fees are approximately \$3,000 per football game and \$2,200 per men's basketball game.

53. Is the value of the tickets being utilized in sponsor agreements included in the sponsor investment level detailed in Appendix B or have they been deducted from the total amount since the rights holder will be responsible to purchase?

Yes, the value of the tickets is included in the investment level detailed in Appendix B.

54. The University states that "sponsor promotional items (premiums) have been both purchased directly by sponsors and the University has purchased promotional items and included the costs into sponsorship agreements." Can the University detail the total expenses that the athletic department incurred for such promotional items that were included in sponsorship agreement in 2011-12 season as well as projected cost for 2012-13?

WVU has historically done very few large scale fan give-away promotions. The University purchases only a small number of premium items for in-game promotions. The approximate cost is \$500 annually. Most expenses were incurred directly by the sponsor.

55. Can the University confirm that all cash revenue items detailed in Exhibit B (Sponsorships, Rights Fees and Consumer) will be inherited by the rights holder? In addition, please confirm that the rights holder will manage and negotiate these relationships moving forward with the exception of Nike, United Bank and Chesapeake Energy (Capital Classic).

Yes for both questions, with the exception of the University retained sponsors listed at the top of Exhibit C (Chesapeake Energy for Capital Classic, Nike and United Bank).



Procurement, Contracting and Payment Services

56. Will the Rightsholder be able to develop a photo store, DVD store and online auctions for the University? And will the rights holder be allowed to include projected revenue from these opportunities in a RFP proposal response?

Yes, subject to the restrictions imposed by copyrights related to photos and videos, and State of West Virginia regulations related to the sale of surplus equipment and goods related to online auctions. Offerer should provide detailed information in its proposal to the value related to photos, videos and online auctions.

57. Regarding the game programs for soccer, gymnastics, volleyball, etc. (everything except football & basketball), are these one-time print jobs which do not change from home event to home event? The quantities listed would seem to indicate that but would like to confirm.

See updated Exhibit M for more detail.

58. Notes state specifically that WVU is responsible for design of Game Day programs. Does WVU also provide the design work (and printable files) for posters, schedule cards and magnets?

Currently, WVU provides the design and content for all game day programs, posters, schedule cards and magnets. They are provided print-ready to the printer electronically via ftp site or by disk.

59. What is the commission that the ROTC receives for selling the game program?

20% of gross sales.

60. Does ROOT Sports produce the football and basketball live events?

Production is a shared. See #49 for more detail.

61. How many Post-Season Shows are produced for football? Is that show(s) included in the 13-14 football shows listed in the document?

The current agreement with West Virginia Media Management permits the licensee to produce up to 18 one-hour programs, including the 13-14 regular season shows. Additional shows can air during preseason and postseason.

62. Are there any talent requirements/fees related to the TV shows?

The University provides the availability of the head coach and, as needed, assistant coaches as part of the license fee paid to the University. Talent fees related to the production are the responsibility of the Licensee.

63. Please confirm that WV Media Management is the same as West Virginia Media Holdings.

Yes it is. Agreements are with West Virginia Media Management.

64. How many minutes of highlights can appear in 1-hour TV show? (The RFP refers to guidelines for "member institution branded outlet" which is not how these TV shows would be distributed).

Big 12 Conference regulations provide schools, or its licensee, the opportunity to air up to eight minutes of game highlights from conference television partners (ABC, ESPN, Fox, FSN, FX, etc.) the day following the game until



Procurement, Contracting and Payment Services

the third day. Additional time for game highlights is available following the third day to the 15th day following the game.

65. Does WVU have a television production truck available for its use?

The University does not own or operate a television production truck.

66. If maintaining the current WVU broadcast team is important to WVU, please share the talent compensation for each member of the broadcast crew. Otherwise, Rightsholders may underestimate the talent compensation.

The radio talent fees are approximately \$3,000 per football game and \$2,200 per men's basketball game.

66. Do any other companies or stations/affiliates produce their own pregame or postgame shows for WVU football and basketball games? If so, please provide detail of these shows.

The MetroNews Radio Network produces pregame and postgame programming prior to and after each football and men's basketball games. MetroNews distributes the programming to its stations and is not affiliated with the MSN broadcasts. The University is not required to provide access to coaches for these programs.

67. Please provide the basic deal points of the SiriusXM agreement.

The agreement expires at the conclusion of the 2012-13 season. Last season, 12 regular season football games and 27 men's basketball games (all conference and nine non-conference games) aired on SiriusXM.

68. Please confirm that no fees were paid to affiliates to broadcast WVU programming.

Currently, the University does not pay its affiliates to air WVU programming.

69. Will the Rightsholder receive 100% of OAS advertising inventory? If not, what percentage will Rightsholder receive?

With the exception of the United Bank sponsorship and activation of the University's agreement with Nike, it is anticipated that the Rightsholder would retain OAS advertising inventory.

70. Will the Rightsholder receive any revenue from the CBS Interactive subscription agreement?

The agreement with CBS Interactive expires after the 2012-13 season.

71. Is it possible to utilize another internet provider than Citynet? If not, will WVU be responsible for any fees related to hosting the website?

Yes. However, the relationship between the University and Citynet for the operation of the University's Official Athletic Site has been successful.

72. What is the total cost of promotional items (premiums) that have been purchased by University in 2011/12?

The University purchases only a small number of premium items for in-game promotions. The approximate cost is \$500 annually. Most expenses were incurred directly by the sponsor.



Procurement, Contracting and Payment Services

73. Related to Exhibit B, please define what the "Consumer" column represents.

Gross revenues related directly from the sale of football game programs and any miscellaneous consumer-generated sources, including royalties from special retail projects.

74. Regarding the 10 line items located under the sponsor names in Exhibit C, please detail which categories each line item falls under in Exhibit B (i.e. Sponsorships, Rights Fees, Consumer or Trade).

Additional Program Advertising - Sponsorships

Program Sales – Consumer

Sponsorships – Sponsorships

Affiliate Rights Fees – Rights Fees and Trade

Media Rights Fees – Rights Fees and Trade

Postseason Rights Fees/Sponsorships – Sponsorships and Rights Fees

Online Royalties – Rights Fees

Game Day Hospitality – Sponsorships

University Magazine – Sponsorships

Miscellaneous – Cash and Trade

75. Please confirm that Rightsholder will receive all revenue derived from those agreements listed in Exhibit C.

Yes, with the exception of the University retained sponsors listed at the top of Exhibit C (Chesapeake Energy for Capital Classic, Nike and United Bank).

76. Section III, Item 7. Revision in Addendum 4. - Please confirm that expenses only need to be detailed for those expenses that will be the University's responsibility or if they impact the rights fee payment to WVU.

The requirement to provide actual line item amounts only applies to financial offers that take into account expenses for determining the University's share of revenue or in any way impacts the value offering for the University. All proposals, however, must still clearly identify each liability and which party shall be responsible for that cost.

77. Please confirm that naming/sponsoring the parking lots, such as the "Dodge Blue Lot" is within the base scope of rights.

The naming/sponsoring of parking lots is included in the scope of opportunities available to Rightsholders.

78. Is Exhibit E a comprehensive list of all tickets used for sponsors, affiliates, vendors, etc for all rights described in the base scope of rights? There are discrepancies between Exhibit E and what is written in contracts. As an example, Buffalo Wild Wings is to receive 50 women's basketball season tickets per the contract but they are not included in the ticket chart (Exhibit E). Another example is that Exhibit E states that Mister Bee Potato Chips is to receive 4 men's basketball tickets and 4 women's basketball tickets but there is no mention of tickets in the contract. We just want to ensure that we have a solid understanding of all tickets that are currently included in sponsor contracts so that we can budget accordingly.

The information contained in Exhibit E provides Offerer with an understanding of seat locations and number of tickets currently provided to sponsors. As it relates to the basketball season, like other information provided, it is a forecast based upon the prior year. In regards to Buffalo Wild Wings, the women's basketball tickets included in the sponsor agreement are viewed as promotional inventory to drive attendance. Per the response



Procurement, Contracting and Payment Services

to Question 10 above, the University is open to alternate cost options for tickets (including promotional ticket inventory) for sports other than football and men's basketball.

79. Please provide the exclusivity of the shoe/apparel agreements. Does the exclusivity extend beyond the exclusive shoe/apparel worn by WVU athletic teams?

The agreement includes exclusive right to provide footwear and apparel, designation as "exclusive athletic footwear, apparel and accessories provider", right to use University marks, access to coaches, right to manufacturer products bearing University marks, right to use University-controlled game photographs and videotape and sponsorship recognition, including the Official Athletic Web Site.

The University cannot accept sponsorships from businesses which are competitors of the University's exclusive footwear, uniform, apparel and accessories provider. For the purpose of clarity, this exclusivity applies to all WVU sponsorship and media assets.

80. Please confirm that in Exhibit B, "Rights Fees" is made up of rights fees paid by West Virginia Radio Corp, West Virginia Media Holdings, and Root Sports. Are there any other fees that fall into that "Rights Fees" category? Does this include any fees received from radio affiliates?

The Rights Fees includes fees paid by West Virginia Radio Corporation, West Virginia Media Management, Root Sports, online royalties (store and subscriptions) and various radio affiliates.

81. Is a Fan Zone implemented prior to football games?

Not at this time. Previously, the University conducted a sponsored Fan Zone inside the Caperton Indoor Practice Facility prior to home football games.

82. Is revenue from Team Fan Shop included in Exhibit B? If so, under which category?

Yes. Rights Fees.

83. Is advertising available on Mountaineer Mail and Text Alerts?

Yes, appropriate restrictions apply.

84. How much trade is utilized for the multi-media sponsors for execution or fulfillment?

None.

85. The sponsor agreements include language which allows WVU to approve the messaging. Is that related to UBIT concerns (advertising vs. sponsorship) or is it a way to ensure messaging is not offensive.

Primarily to ensure the message is acceptable to the University's standards.

86. The sponsor agreements do not reference assigning agreements from WVU to another party. Do you anticipate any issue with sponsors in assigning multi-year deals to a rights holder?

No issue is anticipated.



Procurement, Contracting and Payment Services

87. Do the cash amounts listed in Exhibit C include revenue from post season billing?

Yes. Under the Postseason Rights/Sponsorship at the bottom of Exhibit C.

88. What does WVU require and/or suggest regarding the retention of current staff related to the formation of the Rightsholder staff?

The University is placing no requirements or restrictions on the hiring of current staff.

89. Please clarify the Health Insurance/BCBS exclusive category. Does their exclusive extend only to football stadium or into other media platforms?

Highmark Blue Cross Blue Shield receives category exclusivity on the video boards and scoreboards at Milan Puskar Stadium and the WVU Coliseum and on the courtside scorer's table at the WVU Coliseum. It does not apply to any other WVU sponsorship or media platform.

Highmark's category is for a primary or exclusive health care insurance carrier or agency. For the purpose of clarity, it does not preclude multi-facet insurance carriers or agencies such as State Farm Insurance, Nationwide Insurance, Allstate Insurance, GEICO, etc. or other insurance carriers who specialize in other areas from participating in any WVU sponsorship or media platform.

90. Are the rights to Mountaineer Magazine and Mountaineer Jammin part of the scope of rights? Is revenue from those programs included in the sponsorship revenue figure in Exhibit B?

Mountaineer Magazine and Mountaineer Jammin are no longer produced by the University. The rights to produce a weekly football and basketball television show featuring the head coaches has been licensed to West Virginia Media Management. The rights to any future programs are included in the scope of rights available to the Rightsholder.

91. The question related to the women's basketball program is if there are any pages that change throughout the year or if all 8,000 copies are the same.

The women's basketball program is printed in groups of three to five games (five editions per season). Approximately 11 pages of the current women's basketball program change each edition. See updated Exhibit M for more detail.

END OF ADDENDUM # 6



West Virginia University[®]

Procurement, Contracting and Payment Services

Evaluation Panel - Confidentiality & Conflict of Interest Acknowledgement

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The West Virginia Ethics Act prohibits elected public officials and full-time public employees, whether appointed or employed, from having a financial interest in any contract, purchase or sale over which their public position gives them control, unless the total value of such contracts, purchases or sales does not exceed \$1,000 in a calendar year. Even then, the public official may not be involved in influencing the award of the contract. This \$1,000 exception may not be relied upon by county officials who are governed by the stricter limitations in W. Va. Code § 61-10-15.

This prohibition also extends to contracts in which the public servant's spouse, dependent parents, or dependent children have a financial interest, as well as to any business with which the public servant or his or her immediate family members are associated.

For purposes of this prohibition, public servants and their immediate family members are associated with a business if any one of them is a director or officer in the business, or if they hold stock in the business which constitutes 5% or more of the outstanding stock of any class.

This provision applies only to:

- (1) those contracts your job gives you authority to award or control and
- (2) those purchases and sales you are authorized to make or direct others to make.

As a member of the Evaluation Panel for the referenced Request for Proposals, and pursuant to the West Virginia University Procurement Rules, I hereby acknowledge and confirm that I shall not disclose information derived from proposals during the evaluation. I further acknowledge and confirm that, pursuant to the West Virginia Ethics Act, I do not have a conflict of interest with regard to the referenced Request for Proposals.

Request for Proposals # Athletic Media Rights

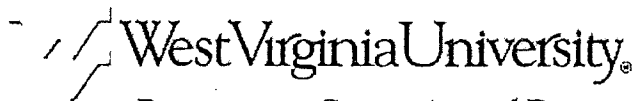
Name Michael Szul

Department WV Athletics

E-Mail Address Michael.Szul@marl.wvu.edu

Phone 304-298-7361

Signature / Date [Signature] 11.13.12



Procurement, Contracting and Payment Services

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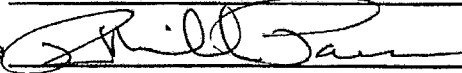
Request for Proposals # Athletic Media Rights

Name R. Michael Parsons

Department Athletics

E-Mail Address mike.parsons@mail.wvu.edu

Phone 304-293-2821

Signature / Date  10/4/12



West Virginia University

Procurement, Contracting and Payment Services

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Request for Proposals #

Athletic Media Rights

Name

David Johnston

Department

Athletic Consultant

E-Mail Address

djohnston@rockbridge sports.com

Phone

434-422-0204

Signature / Date

11/12/12



Procurement, Contracting and Payment Services

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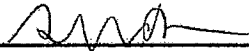
Request for Proposals # Athletic Media Rights

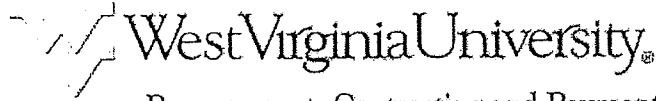
Name ALAN GRAHAM PEACE

Department COLLEGE OF BUSINESS + ECONOMICS

E-Mail Address Graham.Peace@mail.wvu.edu

Phone 304 293 7440

Signature / Date  11/12/12



Procurement, Contracting and Payment Services

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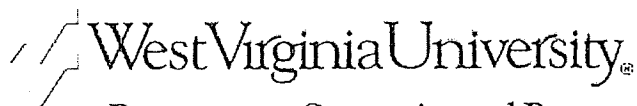
Name Robert K. Griffith

Department Basic Pharmaceutical Sciences

E-Mail Address rgriffith@hsc.wvu.edu

Phone 304-293-1481

Signature / Date Robert K. Griffith 10-13-12



Procurement, Contracting and Payment Services

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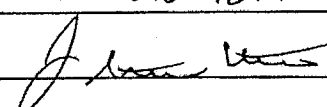
Request for Proposals # Athletic Media Rights

Name J. STEVEN KITE

Department Geology & Geography

E-Mail Address JKITE@WVU.EDU

Phone 304 293 9819

Signature / Date  13 Nov 2012

Media Rights Preliminary Offeror Selection

From: Tim Bostonia

To: Graham Peace; Michael Szul; Mike Parsons; Oliver Luck; Robert Griffith; Steve Kite

CC: David Johnston; Rossi Wiles

Date: Monday - December 3, 2012 12:16 PM

Subject: Media Rights Preliminary Offeror Selection

To: All Committee Members:

As we discussed during this morning's conference call, the record needs to show that you concur with the statement below. While there are additional details and analysis outstanding, it was agreed that those details would not have a material effect on the value of the offers in hand.

If you agree with the statement below, please respond via return e-mail that you concur. Feel free to add any comments. Your affirmation is confidential, but will become part permanent procurement and contract record.

Please let me know if you have any questions...

Tim Bostonia

Associate Director

Procurement, Contracting and Payment Services

304.293.8443

Based on review of all offers, presentations, and discussions, including each offeror's capacity, quality, cultural fit, and financial offers; and further based on the committees discussions and findings with regard to the offers at various stages in the evaluation process, I concur that IMG has submitted the offer that is apparently most advantageous to the University. I recommend that the University engage in good faith negotiations with IMG to secure a final agreement. I understand that an invitation to final negotiations does not bind the University to any agreement with IMG until such time as the terms, conditions, and financial consideration issues are reviewed and agreed to in writing by both the Department of Intercollegiate Athletics, the University, and IMG.

From: Oliver Luck
To: Cathy Martin
Date: 12/20/2011 1:01 PM
Subject: Fwd: WVU Sponsorship & MMR Analysis (Nov 17, 2011 Draft)
Attachments: Collegiate MMR Market.pptx; WVU Master Model - Nov 17, 2011 (Working Draft).xlsx

Pls send WVU master model to Drew Payne. Thanks.

>>> "David Johnston" <djohnston@rockbridgesports.com> 11/18/2011 11:29 AM >>>

Oliver:

Key tabs from the overall model attached....this should give Stu plenty to digest over the weekend (my apologies for the small type).....would suggest an on-line conference call early next week to walk through together. I also included some course of action analysis: comparing the status quo & proforma numbers against various outsourcing targets, along with an overview slide of the current MMR landscape, key players, and their market share.

Let's try and catch up before you head south.

David

David Johnston
Rockbridge Sports Group
501 W. Main Street
Charlottesville, VA 22903
434-422-0204 (cell)
djohnston@rockbridgesports.com

GenCounsel-LitReview - Re: AthleticMultiMediaRightsRFP-DeptAthletics-Draft2-20120430

From: Andrew Payne III <andrewpayne3@gmail.com>
To: Oliver.Luck@mail.wvu.edu
Date: 5/4/2012 3:42 AM
Subject: Re: AthleticMultiMediaRightsRFP-DeptAthletics-Draft2-20120430

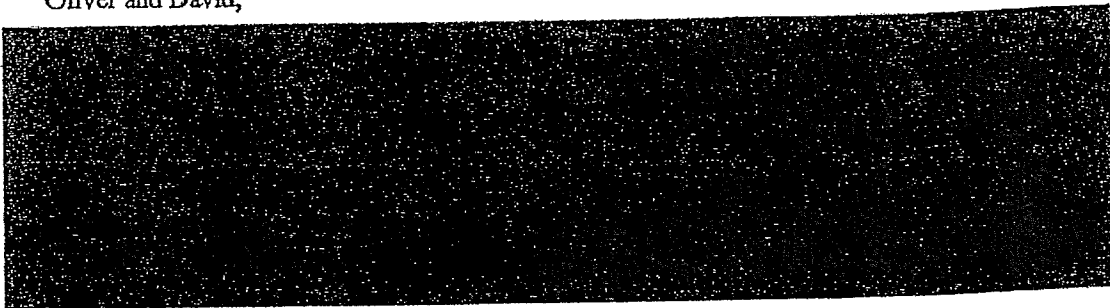
Congratulations. Looks good to me. I think the responses will be strong

Sent from my iPhone

On May 3, 2012, at 11:13 PM, "Oliver Luck" <Oliver.Luck@mail.wvu.edu> wrote:

FYI

>>> Rossi Wiles 5/3/2012 4:51:43 PM >>>
Oliver and David,



Rossi

Rossi E. Wiles
Associate General Counsel
Office of the Vice President for Legal Affairs and General Counsel
West Virginia University
105 Stewart Hall - PO Box 6201
Morgantown, WV 26506-6201
Phone: (304)293-2220
Fax: (304)293-5752

CONFIDENTIALITY NOTE: This e-mail message is from the Office of General Counsel for West Virginia University and is for the sole use of the intended recipient or recipients and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution, or other dissemination of this e-mail message and/or the information contained herein is strictly prohibited. If you are not the intended recipient of this e-mail message, please contact the sender by reply e-mail and destroy all copies of the original message.

<AthleticMultiMediaRightsRFP-DeptAthletics-Draft2-20120430.docx>

From: Oliver Luck
To: andrewpayne3@gmail.com <andrewpayne3@gmail.com>
Date: 5/14/2012 5:44 PM
Subject: Fw: Fwd: WVU RFP
Attachments: Legends -Who We Are.pdf

FYI. We should have the RFP posted in a couple days.

>>> David Johnston <djohnston@rockbridgesports.com> 5/14/2012 5:40:00 PM >>>FYI. Strong horse in the race.

Sent from my iPhone

David Johnston
Rockbridge Sports Group
434-422-0204 cell

Begin forwarded message:

> From: "Manias, George" <gmanias@legendshm.com>
> Date: May 14, 2012 3:03:19 PM EDT
> To: "djohnston@rockbridgesports.com" <djohnston@rockbridgesports.com>
> Subject: WVU RFP
>

> Mr. Johnston
>
>
>

> Please allow me to introduce myself. I am the Vice President of a company called Legends Sales & Marketing, which is owned by a joint venture between the Dallas Cowboys, NY Yankees and Goldman Sachs. With the successes of our Cowboys and Yankee Stadiums, over the years, we have put together a solid business that sells commercial rights opportunities for stadiums, arenas, municipalities, convention centers, pro teams, collegiate athletic departments and facilities internationally, specializing in naming rights, sponsorship and premium seating sales.
>
>

> I am reaching out to you because I recently read an article that you are assisting WVU in their search for a firm to represent the collegiate athletics multimedia rights. I would like to request that Legends be considered and have the opportunity to respond to the RFP when it comes out.
>
>

> I have attached an overview of who we are, so you have some background info to start with.
>
>

> I appreciate your consideration.
>
>

> Please see attached
>
>
>
>

> George Manias
>

> Vice President-Sponsorships
>

> Legends Sales & Marketing
>

> 7200 Bishop Rd. Suite #220
>

> Plano, TX 75024
>

> Cell # (214)-601-4105
>

> Office # (469)-298-7054
>

>
>
>
>
>
> www.legendshm.com
>
>
>

Please allow me to introduce myself. I am the Vice President of a company called Legends Sales & Marketing, which is owned by a joint venture between the Dallas Cowboys , NY Yankees and Goldman Sachs. With the successes of our Cowboys and Yankee Stadiums, over the years, we have put together a solid business that sells commercial rights opportunities for stadiums, arenas, municipalities, convention centers,

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Please see attached

George Manias

Vice President-Sponsorships

Legends Sales & Marketing

7200 Bishop Rd. Suite #220

Plano, TX 75024

Cell # (214)-601-4105

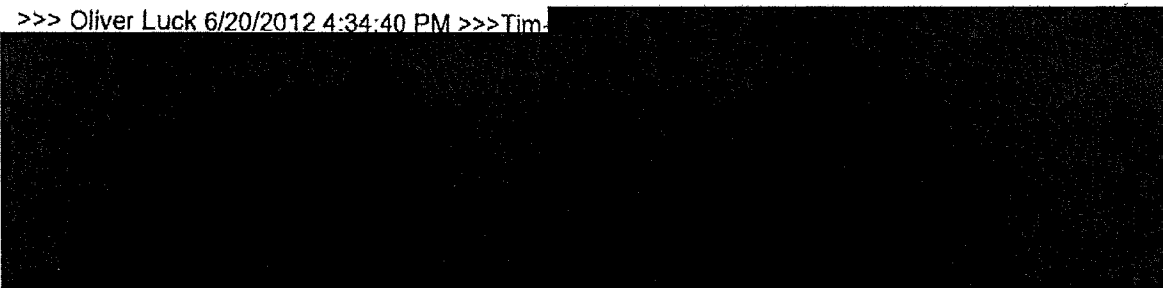
Office # (469)-298-7054

www.legendshm.com

From: Oliver Luck
To: andrewpayne3@gmail.com <andrewpayne3@gmail.com>
Date: 6/20/2012 4:35 PM
Subject: Fw: Athletic Media Rights - Strategy Meeting and Pre-Proposal Conference Call
Attachments: IMAGE.jpg

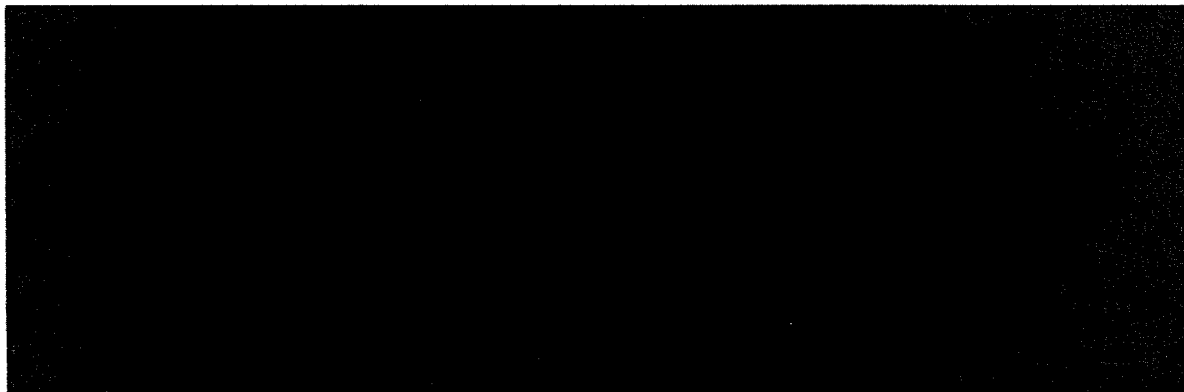
This bureaucracy is killing us.

>>> Oliver Luck 6/20/2012 4:34:40 PM >>>Tim-



Oliver

>>> Tim Bostonia 6/20/2012 4:10:08 PM >>>Oliver and all



Please let me know if you have any questions or call any time.

Sincere Thanks,

Tim Bostonia
Associate Director
3408 One Waterfront Place
Morgantown, WV 26506

Phone: 304.293.8443

Cell: 304.290.2058
FAX: 304.293.7193

Oliver Luck - bray

From: "David Johnston" <djohnston@rockbridgesports.com>
To: Oliver.Luck@mail.wvu.edu
Date: 6/18/2012 1:48 PM
Subject: bray

I spoke with Bray. We are scheduled to visit more this afternoon or tomorrow.
David



David Johnston
Rockbridge Sports Group
501 W. Main Street
Charlottesville, VA 22903
434-422-0204 (cell)
djohnston@rockbridgesports.com

September 5, 2012

Ms. Brenda Mowen
Chief Procurement Officer
3rd Floor – One Waterfront Place
PO Box 6024

Dear Ms. Mowen,

This correspondence is to request that your office approve the retention of Rockbridge Sports Group to provide athletic media rights and sponsorship consulting services on a sole-source basis on behalf of the Department of Intercollegiate Athletics. This correspondence provides the evaluation and justification for proceeding with a sole-source contract for West Virginia University.

As the Director of Intercollegiate Athletics, I am charged with organizing, managing, and implementing the strategic goals of leveraging and managing the various athletic rights and assets of this University to the fullest extent possible. In preparation for this highly complex move to evaluate and assess the University utilization of its athletic media and sponsorship assets, Rockbridge Sports Group provided a narrow and limited scope of service to the University which were procured utilizing discretionary funds of approximately Forty-Five Thousand (\$45,000) dollars provided by the Mountaineer Athletic Club. Upon finalization and successful completion of these services, it was apparent that while the University had successfully managed these services in the past, the current growth, success, and move to the Big 12 Conference by the University's athletic programs may be better represented by soliciting proposals from national sports management firms.

In direct support of this initiative and to ensure successful solicitation, selection, negotiation, and future operational effectiveness of any partnership formation, it is imperative that Rock Bridge Sports Group continue providing consulting services throughout the competitive selection and potential contracting stages that will follow over the next several months. The purpose and objective of the consulting services are to ensure successful acquisition and partnership formation with a multi-media and sponsorship entity to market, manage, and represent West Virginia University athletic assets in the local and national markets. WVU is one of a limited number of Division 1 athletic higher education institutions which manage such services in-house which, due to the limited sports rights acquisition inventory left in the marketplace, has limited the number of consulting firms or individuals engaged in providing these consulting services.

Please know that without conflicting with potential qualified marketing partners, I personally researched and contacted all known providers that may have been interested and qualified to provide the consulting services and which had experience in the higher education sports market. The results of this research lead to three potential providers of the scope of services being requested by my office. After consideration, one firm was clearly unqualified to

engage for these services and, upon confirmation by the principal owner of the other firm that the firm was not interested due to reallocation of company assets and personnel into other sports marketing areas; Rock Bridge Sports Group was clearly the only choice the University had to proceed and, as detailed below, were highly qualified to provide such services.

From a quality based perspective, after analyzing the qualifications of several individuals and firms, it is my professional opinion that Rock Bridge Sports Group, through co-founders Mr. David Johnston and Mr. Rich Klein, provide the type of unique comprehensive consulting services, including specialized knowledge and past representation, needed to accomplish our objectives. Mr. Johnston began his career in the sports industry as an Account Executive for Corporate Sales and Director of Licensing & Merchandising for the U.S. Ski and Snowboard Teams. Johnston worked closely with team and Olympic sponsors, suppliers, and licensees leading up to the 2002 Olympic Winter Games in Salt Lake City. In addition, Mr. Johnston has unique experience and knowledge involving the collegiate multimedia rights industry as the General Sales Manager of Terrapin Sports Marketing. Mr. Johnston's main responsibilities in this position were to develop and lead the sales campaign and inventory build out of Maryland's new Comcast Center arena. Two years later, Mr. Johnston joined CBS's senior management team where he was responsible for the overall operation, growth and financial success of the company and was directly engaged in the acquisition and start-up of ten new collegiate and media partnerships.

Mr. Johnston co-founded Rockbridge Sports Group, with Mr. Rich Klein who worked for CBS Collegiate Sports Properties for 15 years, following a successful career in Higher Education publishing sales with McGraw-Hill. At CBS, Mr. Klein took the sponsorship sales lead for the state of the art Schottenstein Center at The Ohio State University and afterward was the General Manager at Cavalier Sports Marketing at The University of Virginia for five years.

During his time as a Vice President of Collegiate Properties, Mr. Klein was responsible for the acquisition, start-up and direct oversight of numerous collegiate multi-media and media properties for CBS including LSU, University of Virginia, University of Maryland, and University of Utah. Mr. Klein's creative inventory concepts have become standard within the collegiate marketplace, generating of over 200 million dollars in sponsorship sales throughout his career.

In conclusion, from quality, pricing, and strategic standpoints, Mr. Johnston's and Mr. Klein's intimate knowledge of the higher education sports marketing, sponsorship, and media industry is unmatched and unavailable elsewhere in the marketplace. Therefore, I am requesting your approval to move forward with the finalization and affirmation of a sole-source contract to Rock Bridge Sports Group. The expected services provided would be strategic and tactical consulting services provided throughout the bid process, evaluation, selection, and contract negotiation beginning July 1, 2012 to approximately June 30, 2013 with an estimated total dollar value being around \$7,500 per month inclusive of travel, lodging, and expenses. If successful, an additional lump sum payment of \$100,000 would be owed on or around June 30, 2012.

If you have any questions or concerns regarding this request please do not hesitate to contact me at your convenience.

Sincerely,

Oliver Luck
Athletic Director
West Virginia University



AGREEMENT FOR SERVICES
Between
WEST VIRGINIA UNIVERSITY
And
ROCKBRIDGE SPORTS GROUP

This Service Agreement ("Agreement") made this 23 day of July, 2012, by and between the West Virginia University Board of Governors on behalf of West Virginia University and its Department of Intercollegiate Athletics, located in Morgantown, WV 26506, ("University"), and Rockbridge Sports Group, located at 501 Main Street, Charlottesville, VA 22903, ("Vendor").

WHEREAS, the University desires to have the Vendor perform certain professional services;

WHEREAS, the Vendor represents that he/she is qualified, ready, willing and able to perform such professional services; and

THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. Scope of Work.

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth below ("Services"), with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University. The Services shall include the following:

Provide strategic and tactical consulting services to University's Department of Intercollegiate Athletics in order to procure an outsourced multi-media rights partner that delivers the greatest value and net revenue to the University. Vendor shall provide support and analysis in the areas of contract bonuses, revenue make-up, capital commitments, expense mitigation and budget. Comprehensive support in the state of West Virginia competitive bidding process by providing University committee members with advice and counsel to current market data, opinions, and other aspects of multi-media and marketing services.

Vendor, as agent for University, shall participate and provide advice and counsel only to University relating to the following:

- (1) pre-bid activities including, but not limited to, conferences, submissions, campus visits, proposer communications, and submission requirements.
- (2) Response Evaluation and Partner Selection including, but not limited to, providing University Committee Members assistance in reviewing and evaluating proposer responses including selection criteria, proposal submissions, risk assessments, marketing analysis, and other support requested by University.
- (3) Contract Negotiations including, but not limited to, attendance at all contract negotiation meetings; University requested market analysis, consultations with appropriate University personnel, reflective market analysis of agreement terms and conditions, revenue make-up, risk assessments, and guidance regarding overall business relationship between University and selected media partner.

2. Agreement Term.

This Agreement shall commence on July 1, 2012, and will terminate on July 1, 2013, or as otherwise stated in this Agreement. The University reserves the right to alter the starting and ending dates according to the needs of the University.

3. Compensation.

- A. The University will pay Vendor for the Services performed hereunder on the following basis (specify rates or flat fixed fee); all expenses agreed to by the parties, including travel, shall be included in the daily rate or fixed fee compensation. University will not reimburse or otherwise be responsible for fees not contained therein. Any terms or conditions contained in an invoice or rate schedule which are different from, in addition to, or which vary the terms and conditions of this Agreement, shall not be binding upon University and University objects thereto.

Fixed Fee/Lump Sum for Services: 0



or

Rate Schedule/Other: \$7,500/month during term of agreement. In addition, University agrees to pay Vendor a lump sum payment of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) upon successful completion of signing a multimedia rights partnership agreement or upon University having completed a successful multimedia search, in its sole and absolute discretion, but deciding to retain its current practice of "in-house" multimedia management. Expected completion of selection to be July 1, 2013.

- B. Payment will be made upon submission of detailed invoices and any other documentation required for such payment based upon Section 3 A., above. Payment will only be made in the name of the Vendor as specifically identified and set forth in this Agreement. Invoices shall contain, or be attached to, supporting documentation that is satisfactory to the University which, at a minimum, shall state the Service rendered in detail, dates of Service, Contract Identification, and any additional information facilitating the proper allocation and payment of such invoice.
- C. If applicable, Vendor must be registered with the State of West Virginia pursuant to W. Va. Code §18B-5-5 before the Vendor is eligible to render services to the University. To be eligible to render services hereunder, Vendor must have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. By execution of this Agreement, Vendor warrants that it is a registered vendor with the State of West Virginia and in good standing.
- D. Upon request from University and upon execution of this Agreement, Vendor shall provide University with a completed original Department of the Treasury, Internal Revenue Service, Form W9 "Request for Taxpayer Identification Number and Certification."
- E. University shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, University shall provide, upon the request of Vendor, all applicable tax exemption certificates.
- F. All invoices for Services shall be paid in arrears within thirty (30) days after the submission by Vendor of a valid invoice for Services rendered. Pursuant to W. Va. Code § 12-3-10, payments may only be made after the services have been performed. No deposit or prepayment may be requested by Vendor or paid by University.
- G. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these Services, this Agreement becomes void and of no effect after June 30.

4. Reporting.

In rendering the Services performed hereunder, the Vendor shall communicate with West Virginia University through its Enter Department/School/Unit to the attention of Enter the specific WVU position (not individual) who will be the contact person for WVU.

University shall have the right, but not the duty or obligation, to inspect the work at any time to ensure compliance with the terms and provisions of this Agreement.

5. Method of Operations.

- A. Vendor shall promptly commence and diligently prosecute the Services in a safe, careful, skillful, efficient and workmanlike manner in accordance with recognized methods and practices, in compliance with all lawful policies of the University, and in compliance with all federal, state and local laws, rules and regulations, orders and permits, now existing or hereinafter enacted with respect to the Services and the Vendor, including but not limited to, laws relating to equal employment opportunity, as well as all generally accepted standards applicable to such work.
- B. Vendor certifies that it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Agreement pursuant to W. Va. Code § 5A-3-10a.



- C. Vendor submits that to its knowledge, no officer or employee of the State of West Virginia or University has participated in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W. Va. Code § 6B-1-2, *et seq.* (2010).
- D. Vendor certifies that it (a) has full power and authority to enter into this Agreement and (b) will not hereafter enter into any agreement or understanding with anyone else that might conflict with this Agreement.
- E. Unless otherwise directed by University in writing, Vendor shall secure all necessary permits, licenses, bonds (if applicable) and identification numbers required to perform the Services and shall pay all fees in connection therewith. Vendor shall be fully responsible for compliance with same and shall fulfill all obligations in relation thereto. If requested, Vendor shall provide University with copies of all permits, licenses, bonds and identification numbers required to perform the Services.
- F. Vendor shall provide to University all documentation necessary and required to show proof of insurance and proof of Workers' Compensation coverage prior to University executing this Agreement. Vendor further agrees and understands that failure to maintain the required insurance as stated in Section 14 may lead to termination of this Agreement pursuant to Section 14 below, in the sole discretion of University.

6. Relationship of the Parties.

Vendor shall perform the Services as an independent contractor. University is interested only in the results to be achieved and compliance by Vendor with the terms and conditions of this Agreement and all applicable laws. The conduct and control of the Services shall lie solely and exclusively with Vendor. Neither Vendor nor any of its agents, employees, subcontractors, servants or invitees (collectively "Vendor's employees") shall be considered an agent or employee of University, nor shall anything in this Agreement be construed as creating a single enterprise or joint venture, for any purpose. Vendor's Employees are not entitled to any benefits provided by University for its employees. However, the work is subject to the right of inspection and approval by University and all applicable governmental authorities. Vendor shall be solely responsible for the acts of Vendor and Vendor's Employees during the performance of the Services.

7. Written Notice/Delivery. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent either by registered or certified mail with return receipt requested, facsimile transmission with confirmation of receipt, or by national overnight courier, addressed to the receiving party at the address below:

Enter Vendor Name as identified in Caption above
c/o

Enter Address Line 1
Enter Address Line 2
Enter City, Enter State Enter ZipCode
Phone Number: (304) -
Fax Number: : (304) -
Email:

West Virginia University:
c/o Enter University position title to be notified (Note:
Do not enter specific individual holding position)
Enter Address Line 1
Enter Address Line 2
Morgantown, WV 26506
Phone Number: (304) -
Fax Number: : (304) -
Email:

Copy to:

West Virginia University:
c/o Purchasing, Contracts & Payment Services
Enter Address Line 1
Enter Address Line 2
Morgantown, WV 26506
Phone Number: (304) -



Fax Number : (304) -

Email:

8. **Examination of Records and Vendors Progress.** The University shall have access to and the right to examine any pertinent books, documents, papers, and records of Vendor involving transactions related to this Agreement until the expiration of three years after final payment hereunder. In the performance of the Services, Vendor has the authority to control and direct the performance of the details of the work, the University being interested only in the results obtained. However, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection and supervision to secure the satisfactory completion thereof.

9. **Publicity.** It is also agreed that no advertising publicity matter having or containing any reference to West Virginia University, or in which the name is mentioned, shall be made use of by the Vendor or anyone on the Vendor's behalf unless and until the same shall have first been submitted to, and received the written approval of, an authorized representative of the University.

10. **Non-Discrimination.** The Vendor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

11. **Intellectual Property.** All of the materials developed by Vendor and all materials prepared for and delivered to the University by Vendor under this Agreement shall belong exclusively to the University and shall be deemed to be **works made for hire** and the University shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title and interest therein, including the right to revise, edit, and distribute same. Notwithstanding the foregoing, nothing herein conveys or transfers ownership of or rights to Vendor's Intellectual Property. For the purpose of this Agreement, Vendor's Intellectual Property shall mean and include those tools, templates, reporting formats and other items or artifacts that Vendor employs as part of its normal business. In the event Services resulting from this Agreement include such Vendor's Intellectual Property, then Vendor hereby grants an limited, royalty free, exclusive right to University to use such Vendor's Intellectual Property as it deems fit to carry out the purposes contemplated by this Agreement.

Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the West Virginia University Office of Sponsored Programs, intellectual

property rights will be governed by the terms of the grant or contract to University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

12. **Patent Rights.** The Vendor agrees that any discovery or invention, whether or not subject to patent, developed as a direct result of work done under this Agreement, shall be the sole property of the University and the University shall have the exclusive right to any patent derived therefrom. Vendor further agrees to report promptly in writing to the University any discovery or invention developed under this Agreement.

13. **Indemnification.** Vendor agrees to indemnify, defend, and hold whole and harmless the University, its affiliates, and their respective Board of Governors, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on University premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 do not allow University to hold harmless or indemnify Vendor.

14. **Insurance.** During the term of the Agreement, Vendor shall procure, at its own expense, and maintain for the duration of the Agreement, the following insurance coverage from insurers licensed or registered to do business in the State of West Virginia: (a) Commercial general liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (b) Worker's Compensation insurance in accordance with applicable statutory limits (c) Commercial Automobile insurance in the amount of \$1,000,000 per occurrence for all owned, non-owned, hired, leased, rented, and employee non-owned vehicles, (d) where applicable, professional liability insurance of \$1,000,000 per claim/loss and \$2,000,000 annual aggregate, with proof that coverage shall remain in effect for a minimum of three years from the date of completion of the project, Vendor shall provide such other insurance as may be required by law. All insurance carried by Vendor in connection with the Services shall list University as an additional insured and such insurance shall be primary and not contributory as to any other insurance the University may have in effect. The Vendor shall provide a certificate of insurance to the University evidencing required coverage prior to commencement of the Services. All policies shall provide a minimum of thirty (30) calendar day's written notice prior to cancellation or material change. The insurance company(ies) providing the above

scribed coverage shall have an AM Best Rating of no less than (A-) excellent.

University does not express any opinion as to the sufficiency of the liability limits set forth above. The insurance required hereunder is not a limitation of any liability of Vendor.

15. **FERPA.** Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA") and University's FERPA Policy found at <http://ferpa.wvu.edu/policy> including FERPA's limitations on re-disclosure as set forth in 34 C.F.R. § 99.33(a)(2).

16. **HIPPA.** Vendor shall, if applicable, meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the "Act"), the privacy standards adopted by the U.S. Department of Health and Human Services ("HHS"), 45 C.F.R. parts 160 and 164, subparts A and E (the "Privacy Rule"), the security standards adopted by HHS, 45 C.F.R. parts 160, 162, and 164, subpart C (the "Security Rule"), and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic Clinical Health Act, Division A, Title XIII of Pub. L. 111-5 and its implementing regulations (the "HITECH Act"), due to their status as a "Covered Entity" or a "Business Associate" under the Act. The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to as "HIPAA" for the purposes of this Agreement.

Confidentiality of Information. In order for the Vendor to effectively provide the Services required under this Agreement, it may be necessary or desirable for the University to disclose to the Vendor confidential and proprietary information and trade secrets pertaining to the University's past, present and future activities. The Vendor hereby agrees to treat information which has been designated to the Vendor by the University in writing as being confidential and proprietary information or trade secrets in a confidential manner. The Vendor further agrees that it will not disclose any such information so designated to anyone outside of the University during the period of this Agreement or thereafter without the prior written consent of the University, unless the Vendor is required to disclose any such information for the following reasons: 1) To comply with a legal or court order, 2) to defend itself or pursue its legal rights in a legal proceeding, or 3) to protect the health, safety, or welfare or others.

18. **Termination.** University reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice to Vendor. Such notice shall be delivered pursuant to Section 6, above. Upon receipt of such notice, the Vendor shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by the Vendor in performing this Agreement, whether completed or in progress. Vendor will be compensated for Services provided pursuant to this Agreement to the effective date of termination only.

Force Majeure. Neither Vendor nor University shall be liable for any failure or delay in its performance of this Agreement if such failure or delay is directly or indirectly occasioned by an event of Force Majeure. For purposes hereof, "Force Majeure" means any event beyond the control of either party and which is relied upon by either party as

justification for delay in, or as excuse from complying with, any obligation required of the party under this Agreement, including, but not limited to: (i) an act of God, war, terrorism, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Services; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of execution of this Agreement, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial or material adverse effect on the cost of performing the obligations herein; (iv) any work stoppages, strikes, picketing, labor dispute, or similar activities at the Premises; (v) the institution of a legal or administrative action or similar proceeding by any person or entity that delays or prevents any aspect of the Services. In the event of Force Majeure, and during the continuance thereof, the obligations under this Agreement shall be suspended and neither party shall have any liability to the other due to such event of Force Majeure or such suspension. If the Force Majeure continues unabated for a period of sixty (60) days and renders either party unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then either party shall have the right to terminate this Agreement and shall not have any liability to the other party other than any monetary obligations to the other which has become due prior to the date of such termination.

20. **Changes.** The University may, from time to time, require changes in the scope of the Services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.

21. **Jurisdiction; Governing Law.** The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement. All disputes arising out of related to this Agreement shall be filed by Vendor in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.

22. **Successors and Assigns.** This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. The personal skill, judgment and abilities of the Vendor are an essential element of this Agreement. Therefore, although the parties recognize that the Vendor may employ qualified personnel to provide Consulting Services under the Vendor's supervision, the Vendor shall not assign, transfer or subcontract any portion of the Consulting Services to another party without the prior written consent of the University.

23. **Headings.** The headings of the herein are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

24. **Non-Waiver Provision.** The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.



Severability. Each provision of this Agreement is to be interpreted, such a way as to be valid under applicable law. If any provision is invalid under applicable law, it is to be considered ineffective only to the extent of such invalidity and the remainder of the provision and the other provisions of this Agreement remain valid.

26. **Survival.** The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, indemnifies, certifications, warranties, and any expressed limitation of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

27. **Authorized/Electronic Signatory.** If the Agreement is signed by someone other than the Vendor, the person signing expressly warrants that he/she is the authorized person/entity to execute this Agreement for the Vendor. Any signed document transmitted by fax or other electronic means shall be considered an original document and shall have the binding and legal effect of an original document.

28. **Entire Agreement.** This Agreement and any attachments hereto, represent the entire agreement between the parties and supersedes any prior oral or written understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day, month, and year first written above.

[Enter Vendors Exact Business Name as Identified in West Virginia University Board of Governors
Caption of this Agreement] on behalf of West Virginia University

By: _____

By: _____

Print: _____

Print: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS
8th day of October, 2010 - ???
DARRELL V. McGRAW, JR.
ATTORNEY GENERAL
By: Dawn E. Wanfield
DEPUTY ATTORNEY GENERAL

Brenda Mowen - Rock Bridge Sports Group

From: Brenda Mowen
To: Oliver Luck
Date: 9/25/2012 7:59 AM
Subject: Rock Bridge Sports Group
CC: Dan Durbin

Mr. Luck,

Thank you for taking the time and care to prepare your sole source justification for Rock Bridge Sports Group. I have carefully reviewed it. Given the significance of your requirement, I have scheduled a followup meeting with you to gather information needed to complete my due diligence review. This information includes:

1. Names of the providers contacted.
2. The method used to identify the 3 known providers that were interested/qualified.
3. Whether there was an opportunity to publish your requirement in any way to the general public.
4. A brief explanation of why one provider was unqualified.
5. Confirmation of the total spend ($\$45k + [\$7.5K * 12] + 100k = \$235k$) and how the price was determined to be fair and reasonable.
6. Possibility that the contractor may be needed beyond June 30, 2013 (if so, how to make advance accommodations for this).
7. A copy of the existing agreement for review of Attorney General's T&Cs and modifications, if needed.
8. Any additional documentation you may have relating to items 2, 3, 4, and 6, above..

Your memo clearly explains why you selected Rock Bridge Sports Group to perform the work, their qualifications, the tight deadlines you are working under and the importance of continuity of work. If you could share any of above information with me in advance or at our meeting, it would be quite helpful in completing my evaluation. Please let me know if I should be working with your staff on any the above. I look forward to meeting you.

Brenda Mowen

Chief Procurement Officer

304.293.8450

RESOLUTION

WHEREAS, the State of West Virginia has reorganized the governance structure of higher education; and

WHEREAS, the West Virginia University Board of Governors was created and assumed responsibility for the governance of West Virginia University and its regional campuses, facilities, programs and services on July 1, 2001, pursuant to that reorganization; and

WHEREAS, at its meeting held on June 29, 2001, the West Virginia Higher Education Policy Commission resolved and determined "that all power and control over the business affairs of each state institution of higher education previously delegated to its president remains in effect until December 1, 2001, or until determined otherwise by its governing board or the Chancellor, and that each governing board is to undertake a review of the powers delegated to its president and notify the Chancellor as to its future delegation of those powers by December 1, 2001."; and

WHEREAS, this Board finds that, in order for the business affairs of the University to function in a proper and expeditious manner and to meet the requirements of the University's institutional compact, it is necessary and prudent for this Board to delegate certain power and control over the University's affairs to the president of the University; and

WHEREAS, in making this delegation of authority, this Board recognizes it is retaining all of those powers and duties which are exclusive to the Board and not subject to delegation and notes its powers and duties in relation to the appointment and assessment of the performance of the president; and, further, recognizes its overall responsibility under the law to act as the governing body of the University; and

WHEREAS, in making this delegation of authority, this Board intends the delegation to be limited to such authority as was previously delegated to the president by law, policy, practice or resolution of prior boards and the West Virginia Higher Education Policy Commission which are in effect at the time of this resolution; and

WHEREAS, this Board recognizes it may rescind all or any part of any such delegation of authority at any time it deems it to be in the best interest of the University; and

WHEREAS, West Virginia Code 18B-2A-4(q)^{*} authorizes the Board to make this delegation of authority;

NOW THEREFORE BE IT RESOLVED that the West Virginia University Board of Governors does hereby delegate certain of its power and control over the day to day business affairs of West Virginia University, including its regional campuses, to the president of the University. In making this delegation of authority, this Board authorizes the president, in turn, to make such further delegations of authority to others as the president may deem necessary and appropriate for the day to day management of the business and affairs of the University. Further, in making this delegation, this Board intends for all current delegations from the president to others to remain in effect until such time as this Board, the president or such other authorized person in the chain of authority rescinds the delegation.

^{*}Effect of amendment of 2004: changed to 18B-2A-4(s)

In the exercise of such delegated authority, the Board expects and requires the president to function as the chief executive officer of the University (including all of its campuses, facilities, programs and services) and, both directly and through others, to exercise sound management of the academic, financial, and other operational aspects of the Institution.

The authority delegated to the president includes, but is not limited to:

1. The authority to contract on behalf of the Board in accordance with laws of the State;
2. The authority to solicit and utilize or expend voluntary support for the University;
3. The authority to communicate and collaborate with the governor, the state treasurer, the state auditor and with other state, federal and local officials on matters related to university affairs;
4. The authority to prepare budget requests related to the University's missions, goals and objectives;
5. The authority to ensure the appropriate sequence and availability of academic programs and courses and such other practices as may be necessary to address the various statutory and administrative operational requirements associated with the University's academic programs, including those of nontraditional college age students;
6. The authority to take such actions as may be necessary for the administration of personnel transactions, and to administer the applicable personnel and grievance systems and processes;
7. The authority to transfer and expend appropriated funds as permitted by law for the purposes appropriated;
8. The authority to acquire necessary legal, accounting and consulting services;
9. The authority to hire, transfer and remove employees;
10. The authority to manage all auxiliary enterprises of the University;
11. The authority to advance the interests of the University by acting as its primary spokesperson;
12. The authority to seek charitable funds and other contributions, and federal and private support for University programs and other services;
13. The authority to represent the University on its affiliates and on the boards of partnerships and other enterprises that directly or indirectly fulfill the mission of the University, all without compensation other than expenses related to such service;
14. The authority to supervise the administration of all laws and policies related to the University affairs, including those governing the University's strategic plan and compact;
15. The authority to sign, authorize, and endorse any document relating to the registration of the West Virginia University trademarks, including, but not limited to, those documents which originate from the federal government, from the state government, or from the local government.
16. The authority to take any and all actions necessary to do the foregoing.

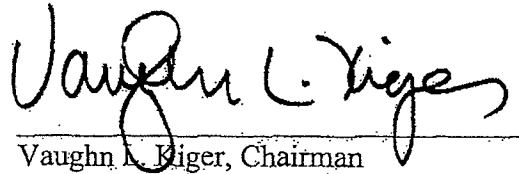
PROVIDED, HOWEVER, that the president:

1. Shall continue to bring to the Board all matters required by statute or policy;
2. Shall continue to advise the Board of all matters not specifically required by law but which as a matter of sound management practice should be brought to the Board's attention;
3. Shall continue to provide appropriate notices of public meetings and provide such other support as may be necessary for planning and for the successful operations of the Board;
4. Shall work with the Board in the development of the president's annual goals. The development and review of the president's goals and objectives and other similar presidential personnel matters shall be in addition to those formal performance evaluation processes set in statute or policy.

BE IT FURTHER RESOLVED that this delegation of authority to the president shall remain in effect until such time as it is specifically limited by this Board or by other lawful authority.

AND, BE IT FURTHER RESOLVED that the Chairman of this Board shall notify the Chancellor of this Board's delegation to the President.

Amended this 8th day of February, 2002


Vaughn L. Riger, Chairman